TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 253.

R. G. STONE, R. M. FINLEY, AND NANNIE E. FINLEY, PLAINTIFFS IN ERROR,

vs.

SOUTHERN ILLINOIS AND MISSOURI BRIDGE COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED APRIL 16, 1906.

(20,196.)

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of Missouri, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court, before you, at the October Term, 1905, thereof, between Southern Illinois & Missouri Bridge Company, Respondent, and R. G. Stone, R. M. Finley and Nannie E. Finley, Appellants, (No. 12089), a manifest error hath happened, to the great damage of the said Appellants in said cause, said R. G. Stone, R. M. Finley and Nannie E. Finley, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if Judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., not exceeding thirty days from and after the date of the Citation in said cause, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 15th day of March, in the year of our Lord One Thousand Nine Hundred and Six.

Issued at office in the City of Jefferson with the seal of the Circuit Court of the United States, for the Central Division of the Western District of Missouri, dated as aforesaid.

[Seal of the United States Circuit Court for the Western District of Missouri, Central Division.]

H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri, Central Division.

Allowed by

THEODORE BRACE,
Chief Justice.

1½ [Endorsed:] No. —. United States Circuit Court, Western District of Missouri, Central Division. Southern Illinois & Missouri Bridge Company, Respondent, *vs.* R. G. Stone, R. M. Finley and Nannie E. Finley, Appellants. Writ of Error to the Supreme Court of *of* Missouri. Returned and Filed. Filed Mar. 15, 1906. Jno. R. Green, Clerk.

Return to Writ.

STATE OF MISSOURI, *ss:*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case together with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of said Supreme Court, at the City of Jefferson, this 30th day of March, A. D. 1906.

[Seal of the Supreme Court of Missouri.]

JNO. R. GREEN, *Clerk.*

2 The United States of America to the Southern Illinois & Missouri Bridge Company, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at Washington, D. C., not exceeding thirty days from and after the day this citation bears date, pursuant to a writ of error, filed in the Clerk's office of the Supreme Court of Missouri, wherein R. G. Stone, R. M. Finley and Nannie E. Finley are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Theodore Brace, Chief Justice of the Supreme Court of Missouri, this 15th day of March, in the year of our Lord One Thousand Nine Hundred and Six.

THEODORE BRACE,
Chief Justice.

2½ [Endorsed:] Original. Supreme Court of Missouri. Southern Illinois & Missouri Bridge Company, Respondent, *vs.* R. G. Stone, R. M. Finley and Nannie E. Finley, Appellants. Citation. Filed Mar. 15, 1906. Jno. R. Green, Clerk.

UNITED STATES OF AMERICA, *Central Division of the Western District of Missouri, ss:*

I hereby acknowledge due service of the within Citation, this 17th day of March A. D. 1906.

W. H. MILLER,
Attorney for Defendant in Error.

3 STATE OF MISSOURI, *set:*

Be it remembered, that heretofore, to-wit, on the 8th day of August, 1903, there was filed in the office of the Clerk of the Supreme Court of the State of Missouri a certified copy of the judgment and order granting an appeal in a certain cause, wherein the Southern

Illinois & Missouri Bridge Company was respondent and R. G. Stone, Nannie E. Finley and R. M. Finley were appellants, which said certified copy of judgment and order granting appeal is in words and figures as follows, to-wit:

Be it remembered, That in the Circuit Court of Dunklin County, Missouri, on the first day of July, A. D. 1903, it being during the May term, 1903, of the said Court, the following among other proceedings were had, to wit:

No. 88.

SOUTHERN ILLINOIS & MISSOURI BRIDGE COMPANY
vs.
R. G. STONE, NANNIE E. FINLEY, and R. M. FINLEY.

This cause coming on for hearing on exceptions of defendants filed herein to the Commissioners' report heretofore filed in this Court, both parties announcing ready for trial, come a Jury, to wit: H. Anderson, Pole Pollock, Tom Medley, J. B. Hale, T. J. Douglas, A. W. Lusk, J. J. Barber, John McMillan, John Bray, James Tatum, and J. W. Bailey, twelve good and lawful men of the body of the County, who are duly sworn to try this cause.

The Jury after having heard the evidence, instructions of the Court and argument of counsel, return into open Court the following verdict:

"We, the Jury, find the defendants, R. G. Stone, & Nannie E. Finley & R. M. Finley for the appropriation of the following described real estate situated at the County of Scott, State of Missouri. to wit: A part of the S. E. & S. W. parts of private survey No. 794 in twp. 30, R. 14 East, and in Lot 2 of the N. E. ¼ of Sec. 2.
4 twp. 29, R. 14 East, being a tract of land 200 feet wide, 100 feet on each side of the center line of the approaches to the Southern Illinois & Missouri Bridge Co. as located and platted beginning at a point on the east line of fractional sec. 24, Twp. 30, R. 14 East, 1240 ft. from the S. E. cor. of said fractional sec.; thence run south 70 degrees 45 minutes east 765 feet; thence by a one degree curve to the right 980 4/10 ft.; thence south 59 degrees 45 minutes east, 924 8/10 ft.; thence by a 2 deg. 30 minutes curve to the left 1289 3/10 feet; thence N. 87 deg. 51 min. east to west bank of the Mississippi river said center line intersects the north line of Tw. 29 100½ ft. west of the N. W. cor. of Lot 2 in the N. E. qr. of sec. 2, twp. 29, R. 14 E., and also intersects the west line of said Lot 269 1/10 ft. south of the N. W. cor. of said Lot 2, have been damaged in the sum of Ten Thousand Dollars.

Foreman, T. A. MEDLEY."

It is, therefore, considered and adjudged that defendants have and recover of and from the plaintiff the sum of ten thousand dollars as their damages by reason of the appropriation of the land in the verdict described by the plaintiff, together with the legal cost herein expended, and therefor they have execution. It further

appearing to the Court that plaintiff has heretofore paid into Court the sum of $8120.00 on account of said damages; now, therefore, upon payment by the plaintiff of a further sum of $1880.00 into Court for the use and benefit of defendants, it is ordered that the easement for the use and purposes of plaintiff, its successors or assigns, for bridge approach, roadways, terminal yards and necessary appurtenances be vested in plaintiff and divested out of defendants and their assigns in the real estate hereinbefore in the Jury's verdict, which is made a part of this decree, fully described.

And afterwards, to wit, on the second day of July, 1903, the following other and further proceedings were had in said Court:

Now at this time come the parties hereto by their respective attorneys, and the Court doth grant the defendants an appeal to the Supreme Court of the State of Missouri and doth grant the said defendants ninety days in which to perfect and file their bill of exceptions herein. Appeal bond is fixed by the Court at the sum of Two Thousand Dollars, subject to the approval of the Clerk in Vacation.

STATE OF MISSOURI, *County of Dunklin, ss:*

I, William P. Finch, Clerk of the Circuit Court within and for the County and State aforesaid, do hereby certify that the above and foregoing is a full, true and complete transcript of an entry of Judgment and Order granting an Appeal in the case wherein the Southern Illinois & Missouri Bridge Company is Plaintiff and R. G. Stone, R. M. Finley and Nannie E. Finley are defendants, as fully as the same appears of record in my office.

In testimony whereof I have hereto set my hand and affixed the seal of the Court. Done at the City of Kennett on this the 22d day of July, A. D. 1903.

W. P. FINCH,
Circuit Clerk,
By FRED. L. BYRKIT,
Deputy Clerk.

[SEAL.]

And afterwards, to-wit, on the 16th day of December, 1905, the said appellants filed their abstract of record in said cause, which said abstract of record is in words and figures as follows, viz:

In the Supreme Court of Missouri, October Term, 1905.

No. 12089.

SOUTHERN ILLINOIS & MISSOURI BRIDGE COMPANY, Respondent,
vs.
R. G. STONE, R. M. FINLEY, and NANNIE E. FINLEY, Appellants.

6 Appeal from the Circuit Court of Dunklin County, Hon. J. L. Fort, Judge.

Appellant's Abstract of Record.

STATE OF MISSOURI, *County of Scott, ss:*

Be it remembered, that heretofore, to-wit: on the 24th day of April, 1902, at 10:40 a. m., there was filed in the office of the Clerk of the Circuit Court of Scott County, within and for said county and State, a petition in cause No. 16, wherein the Southern Illinois & Missouri Bridge Company is plantiff and R. G. Stone, R. M. Finley and Nannie E. Finley are defendants.

It appears from the transcript on change of venue that the "blue print" mentioned in the petition, was not "thereto attached."

The said petition is in words and figures as follows, to-wit:

In the Circuit Court of Scott County, Missouri, to October Term, 1902.

SOUTHERN ILLINOIS & MISSOURI BRIDGE COMPANY, Plaintiff,
v.
ROBERT STONE, R. M. FINLEY, NANNIE E. FINLEY, DAVID HELDT, BURCHARDT MILLER, and PERRY BATES, Defendants.

Plantiff for its cause of action says it is a corporation regularly incorporated under the laws of the State of Illinois and has obtained from the Secretary of State of the State of Missouri authority to do business in the State of Missouri.

That it is incorporated for the purpose of erecting and maintaining a bridge across the Mississippi river from a point near Thebes, in Alexander County, Illinois, to a point near Manning's Landing, in Scott County, Missouri, with the necessary appurtenances thereto.

That said bridge is being constructed under an act of Congress entitled an act to authorize the Construction of a bridge across the Mississippi River at or near Gray's Point, Missouri, approved January 26th, 1901. That the same is being constructed within the territorial limits and conditions in said act fully set out.

That the said bridge is intended as a railway bridge and it is necessary for this plaintiff to have a right-of-way for its railway tracks, bridge and terminal yards, etc.:

That the general direction of its yards will be westwardly from the western bank of the Mississippi river.

That for the purpose of carrying out its charter privileges it is

necessary for it to hold and to own the following described tract of land, lying and being in the County of Scott, State of Missouri, to-wit:

7 A part of the S. E. and S. W. parts of private survey No. 749 in tw. 30, range 14 East, and in lot 2 of N. E. qr. of sec. 2, tw. 29, range 14 East, being a tract of land 200 ft. wide, 100 ft. on each side of the center line of the approaches to the Southern Illinois and Missouri Bridge Co., as located and platted beginning at a point on the East line of fractional sec. 34, tw. 30, R. 14 East, and 1240 ft. from the S. E. cor. of said frac. sec., thence run south 7 degree- 45 minutes East 765 ft., thence by a one degree curve to the right 980 4-10 ft., thence South 59 degree-, 45 minutes East 924 8-10 ft., thence by 2 deg., 30 min., curve to left 1289 3-10 ft., thence N. 87 deg. 51 min. East to the west bank of the Mississippi river; said center line intersects the north line of tw. 29, 100½ ft. west of the N. W. cor. of lot 2 in the N. E. qr. of sec. 2, tw. 29 R. 14 East, and also intersects the west line of said lot 2, 69 1-10 ft. south of the N. W. cor. of said lot 2.

The tract above described contains 20 3-10 acres and will appear by a blue print hereto attached and made a part of this petition.

That the defendants herein, together with R. M. Finley, the husband of one of the defendants, are owners of said real estate.

That defendants, Heldt, Miller and Bates are tenants having growing crops on different portions of said real estate.

That the defendants have refused to relinquish the plaintiff the right to the occupancy and use of said real estate for the purposes designated.

That your petitioner has endeavored to agree with defendants and each of them, upon the price to pay for said property, but has been unable to amicably settle or to agree at all upon a proper compensation to either of the parties defendant.

That said real estate is necessary for the laying of tracks and the handling of business over and across plaintiff's bridge.

Wherefore your petitioner prays the court to make such orders and decrees that may be proper and necessary and to appoint three freeholders of the County of Scott and state of Missouri as commissioners to assess the damages which defendants may sustain in consequence of the establishment, erection and maintenance of said road and approaches over and through the said premises and for all proper orders.

W. H. MILLER,
For Plaintiff.

On the filing of the above petition the court made an order for summons to defendants to appear to answer same at Jackson, Mo., May 9th, 1902; whereupon issued the following summons:

STATE OF MISSOURI, *County of Scott, ss:*

The State of Missouri to the Sheriff of Scott County, Greeting:

8 We command you to summon Robert Stone, Nannie E. Finley, R. M. Finley, David Heldt, Burkhardt Miller and Perry Bates, to appear before the Judge of our Circuit Court at the

Court House in the City of Jackson on the 9th day of May, 1902, then and there to answer the complaint of the Southern Illinois & Missouri Bridge Company, as set forth in the annexed petition, and have you then and there this writ, with your doings endorsed thereon.

Witness, Robert L. Stubblefield, Clerk of our said court, with the seal hereto affixed at office in Benton, on this 25th day of April, 1902.

R. L. STUBBLEFIELD,
Circuit Clerk.

Sheriff's Return.

Executed the within writ in the County of Scott and State of Missouri, on the 28th day of April, 1902, by delivering to R. M. Finley and Nannie E. Finley a copy of the within summons, together with a certified copy of the petition, as furnished me by the Clerk of the Scott County Circuit Court, and further executed this writ in the County of Scott and State of Missouri, on the 29th day of April, 1902, by delivering to Robert Stone, David Heldt, Burkhardt Miller and Perry Bates a true copy of the within summons, together with a certified copy of the petition as furnished me by the Clerk of the Scott County Circuit Court.

ED. HENDERSON,
Sheriff of Scott County, Missouri.

That thereafterwards, to-wit: on May 10th, 1902, appellants, Robert G. Stone, *et al.*, presented their application for a change of venue based on the grounds that the Judge of the Circuit Court of Scott County was prejudiced in favor of plaintiff and against the defendants, and because plaintiff had and exercised an undue influence over the mind of said judge. On the presentation of this application the Judge of said Circuit Court in vacation made an order granting a change of venue, in words and figures following:

It is ordered by the undersigned Judge of said Scott County Circuit Court that the venue of this cause be and is hereby changed and awarded to the Circuit Court of Dunklin County, Missouri, in the Twenty-second Judicial Circuit of Missouri, and it is further ordered that the Clerk of said Scott County Circuit Court file this order and application hereto annexed with the other papers in this cause, and that the said clerk immediately make out a full transcript of the record and proceedings in this cause, including the petition and affidavit and this order of removal, and transmit the same duly certified, together with all the original papers in this cause to the Clerk of the said Dunklin County Circuit Court; and it is
9 further ordered that by consent the original papers in place of certified copies be sent to Dunklin County. And it is ordered that defendants appear in the Circuit Court of said Dunklin County on Wednesday morning at 10 A. M., the 14th inst.

Witness my hand this May 9th, 1902.

HENRY C. RILEY,
Judge of the Circuit Court of Scott County, Missouri.

Which order was duly filed by the Clerk of the Circuit Court of Scott County on May 10th, 1902.

That, thereupon, the Clerk of the Circuit Court of Scott County made up a true, complete and full record of the cause duly certified to, under the seal of his office, and the same was forwarded to the Clerk of the Circuit Court of Dunklin County on May 12th, 1902.

The cause being thereafterwards docketed and coming on for hearing in the said Circuit Court of Dunklin County, the defendants filed their answer to plaintiff's petition, in words and figures following:

In the Circuit Court of Dunklin County, Missouri.

SOUTHERN ILLINOIS & MISSOURI BRIDGE COMPANY, Plaintiff,
vs.
R. G. STONE, R. M. FINLEY and NANNIE E. FINLEY, Defendants.

Answer.

Defendants in the above entitled cause, Robert G. Stone, R. M. Finley and Nannie Finley, limit their appearance herein for the sole and only purpose of this motion, and make the following suggestions and objections against the appointment of commissioners as provided for in plaintiff's pretended petition:

First. No summons or notice has ever been issued and served upon these defendants in the manner required by law. The pretended summons or notice purports to have been issued by the clerk of the court, and it does not appear that prior thereto the said court or the judge thereof had ordered plaintiff's petition to be filed, nor that the court or the judge thereof ordered any summons or notice issued upon said pretended petition. It appears upon the face of said pretended petition, and of said pretended notice or summons, that said petition was never ordered filed and said pretended notice or summons never ordered issued by the court or judge, and that said pretended petition was received and said pretended notice made out without authority from the court and contrary to law.

Second. It appears from the face of the plaintiff's pretended petition, that the plaintiff is a corporation incorporated under the laws of the State of Illinois for the purpose of constructing and maintaining and operating a bridge across the Mississippi River, and these defendants say such a corporation, incorporated under the laws of another State, for such a purpose, has no right, power or authority, under the Constitution and laws of Missouri, to condemn property of any kind, situated in the State of Missouri, for any use, public or private.

Third. It does not appear by said pretended petition that plaintiff has received any authority from the Congress of the United States to erect a bridge across the Mississippi River.

Fourth. It does not appear by said pretended petition that plaintiff has any right or authority to do business in the State of Missouri, there being no allegations anywhere in said pretended petition showing compliance by it with Sections 1014, 1015, 1016, 1017, 1024,

1025, 1026 and 1027, Article 1, Chapter 12, of the Revised Statutes of Missouri, 1899.

Fifth. It does not appear by said pretended petition that plaintiff has surveyed or located the ground over and upon which it pretends to have the right to build railway tracks, bridges and terminal yards, nor does it appear by said pretended petition that it has filed in the office of the Clerk of the County Court of Scott County any profile or map of any such survey or location.

Sixth. The plaintiff has no right, power or authority, under the law, to condemn a strip of land 200 feet wide for a right of way for railroad purposes, or for any other purpose.

Seventh. These defendants further state that prior to the time of the issuance of the pretended notice or summons herein, and that prior to the delivery of the said pretended petition to the Clerk of the Circuit Court of Scott County, Missouri, they had sold, conveyed and transferred the land described in said pretended petition in good faith and for a valuable consideration to J. H. Crowder, L. B. Houck and Giboney Houck by deed duly signed, executed, acknowledged and delivered and recorded in the office of the Recorder of Deeds of said Scott County.

Defendants further state that prior to the beginning, and prior to the pretended institution of this suit in the Circuit Court of said Scott County, the aforesaid deed had been duly filed for record in the office of the Recorder of Deeds of said Scott County.

Defendants further state that, long prior to the execution of the aforesaid deed, they had entered into a contract with the said grantees in said deed for the sale and conveyance of said real estate to grantees, and that said deed was executed and delivered in pursuance of said contract for the sale of said land; and that the plaintiff herein had notice and knowledge, long prior to the execution of said deed, and long prior to the pretended beginning of this suit,
11 of the existence of said contract of sale, and of the fact that these defendants had sold said property to the said grantees in said deed.

So the defendants say, that at the time of the pretended beginning of this suit, they were not the owners of said property and had no title thereto, but on the contrary, the plaintiff herein had constructive notice of said sale and conveyance by the record thereof in said recorder's office as actual notice and knowledge of said sale and conveyance.

Eighth. Defendants further state that, prior to the beginning of this pretended suit, and prior to the delivery of the plaintiff's pretended petition to the clerk of said Scott County Circuit Court, and prior to the issuance of the pretended notice or summons herein, and prior to the pretended service of the said pretended notice or summons on these defendants, the Cape Girardeau & Thebes Bridge Terminal Railroad Company, a corporation organized under the laws of the State of Missouri for the purpose of constructing and maintaining a railroad in Scott County, Missouri, from Frensdorf Station, on Houck's Missouri & Arkansas Railroad, to the Mississippi River, had bought and had acquired and had appropriated to the

public use and for the purpose for which it was incorporated the property described in the said pretended petition.

Ninth. Defendants further state that the plaintiff, which is a corporation under the laws of the State of Illinois, has no right to construct and operate a railroad, nor to engage in the railroad business, in the State of Missouri, because such business is not expressly authorized in its charter or by any law of this State under which said corporation may come; and this proceeding by it to condemn property for the building of a railroad and its engaging in the railroad business in this State violates the plain provisions of Section 1024 of the Revised Statutes of Missouri, 1899, and Section 7 of Article XII. of the Constitution of Missouri.

Tenth. These defendants further state the appropriation by the plaintiff of any part of the real estate mentioned in plaintiff's pretended petition by the plaintiff herein, to any extent whatever, would not only interfere with the use of the same by the Cape Girardeau & Thebes Bridge Terminal Railroad Company for the purpose for which it has acquired and appropriated the same, but would utterly ruin and confiscate the same as the property of said Cape Girardeau & Thebes Bridge Terminal Railroad Company; and even if the plaintiff has a right to condemn, which these defendants deny, the condemnation attempted by the plaintiff in this proceeding would and does violate the fifth subdivision of Section 1075 and Section 1272 of the Revised Statutes of Missouri, 1899.

Eleventh. Defendants further show and state to the court
12 that there is now and has been since May 2nd, 1902, pending in the said Circuit Court of Scott County, Missouri, a suit wherein the Cape Girardeau & Thebes Bridge Terminal Railroad Company is plaintiff, and the Southern Illinois & Missouri Bridge Company is defendant, the object of which suit is to permanently restrain and enjoin the plaintiff herein from in any way interfering with said property, and from doing anything in or about said property tending to disturb the said Cape Girardeau & Thebes Bridge Terminal Railroad Company in its sole and exclusive possession and use of said property; and that a temporary injunction of the said Scott County Circuit Court issued in said cause is now, and has been since May 3rd, 1902, in full force and effect, and, by said temporary injunction, plaintiff herein, its agents and employés, and all who may act in aid of them or either of them, are now enjoined and restrained from interfering in any way with said Cape Girardeau & Thebes Bridge Terminal Railroad Company in its exclusive use, occupancy and possession of said property, and particularly enjoined and restrained from prosecuting the very suit in which this motion is filed, and from taking any possession and from doing anything under and by virtue of any order or proceeding in this suit to disturb said Cape Girardeau & Thebes Bridge Terminal Railroad Company in its said exclusive use, occupancy and possession of said property; and that by permitting plaintiff to further prosecute this suit, or by making any further order or judgment for them or in their behalf in this cause would be contrary to the terms of said injunction, contrary to the law, and would be giving sanction to

violations of writs lawfully issued by the courts of the State, and countenancing acts in violation of law and in contempt of the lawful writs and orders of the court.

Wherefore, defendants pray that plaintiff's petition be dismissed, and that all orders, steps and proceedings heretofore had or done in this cause be quashed and for naught held, and for all other proper relief.

GIBONY HOUCK &
M. R. SMITH,
JOHN A. HOPE,
Attorneys for Defendants.

Thereupon on 14th day of May, 1902, a hearing was had before the court to determine whether commissioners should be appointed by the court to view and appraise the value of the real estate described in plaintiff's petition, and after such hearing and the court being fully advised in the premises did, on said 14th day of May, render the following judgment:

"Now, again, come all the parties in the above entitled cause by their respective attorneys, and this cause having been submitted to the court on the 14th day of May, 1902, on the petition of
13 plaintiff and the answer of the defendants and the evidence introduced by the respective parties, at which time the court took this cause under advisement, and the court having given this cause due consideration and being sufficiently advised finds that prior to the service of process on the defendants in this suit, defendants had conveyed all their interest and estate in the land described in plaintiff's petition, and did not at the time of process in this suit own any interest or estate in said land and that plaintiff at and prior to the institution of this suit had notice and knowledge of the interest of John H. Crowder in said land. The Court further finds that at the date of the filing of the petition in this suit the defendants were the record owners of the property in question. The court further finds that plaintiff has no right to exercise the power of eminent domain and cannot acquire the land described in this petition by proceedings to condemn the same.

Wherefore, it is ordered, adjudged and decreed that plaintiff, Southern Illinois & Missouri Bridge Company is not entitled to have commissioners appointed to assess the damages which would be sustained by its appropriation of the land described in its said petition, and that plaintiff's said petition be and is hereby denied and that said petition be and is hereby dismissed.

It is further ordered that plaintiff take nothing by this suit and that defendants recover their costs herein and have execution therefor."

From this judgment plaintiff prosecuted its appeal to the Supreme Court of the State, and on a hearing of such appeal the judgment of the Dunklin County Circuit Court was reversed, and the cause remanded with directions to the Circuit Court of Dunklin County to proceed at once to appoint three disinterested commissioners, who shall be freeholders, residents of Scott County, Missouri, to assess the damages which the defendants may severally sustain by reason of

such appropriation and to require said commissioners to forthwith return under oath their assessment of such damages to the clerk of the Circuit Court of Dunklin County as required by Section 1266, Revised Statutes of Missouri, 1899, and to take such other and further steps as is required by the statutes in such cases made and provided for the vesting of such abutments, approaches, roadways and yards in the plaintiff company.

That thereafterwards to-wit: on the 23rd day of March, 1903, Hon. J. L. Fort, judge of said Court, in vacation appointed the following three persons as commissioners: A. J. Matthews, Alexander Wright and Frank Anderson, who after personally viewing
14 the premises sought to be condemned, gave a hearing to the parties at Benton, the county seat of Scott County, on the 3rd day of April, 1903, and after a full hearing of said parties, on the question of damages and condemnation of the property, as aforesaid, made their report assessing the damages sustained by the defendants; and the damages so assessed by the commissioners was eight thousand, one hundred and twenty ($8,120.00) dollars, which said sum the plaintiff company promptly deposited with the clerk of the Circuit Court of Dunklin County, and gave the required statutory notices to the defendants of such assessment of damages.

That there afterwards, to-wit: on the 13th day of April, 1903, defendants, R. G. Stone, R. M. Finley and Nannie Findley filed their exceptions to the report of the commissioners in words and figures following:

STATE OF MISSOURI, *County of Dunklin, ss:*

In the Circuit Court of Dunklin County, Missouri, to the May Term, 1903.

SOUTHERN ILLINOIS & MISSOURI BRIDGE COMPANY, Plaintiff,
v.
R. G. STONE, R. M. FINLEY, and NANNIE E. FINLEY, Defendants.

Exceptions to Report of Commissioners.

Now come the defendants, Robert G. Stone, R. M. Finley and Nannie E. Finley, acting in this behalf for the Cape Girardeau & Thebes Bridge Terminal Railroad Company, provided leave of court shall be granted for such purpose, and also acting especially for themselves, and state that while it is true they are the nominal defendants herein, it is also true that the Cape Girardeau & Thebes Bridge Terminal Railroad Company is now the owner of the property sought to be condemned in plaintiff's petition and the real party in interest, and under the statute should be made a party defendant. And, further, the defendants state that said Terminal Railroad Company has been such owner of the property since and prior to the filing of said petition in the office of the clerk of the Circuit Court of Scott County, and that acting as aforesaid for themselves and for the said Terminal Railroad Company, on leave of court, they object and except to the order appointing A. J. Matthews, Alexander

Wright and Frank Anderson commissioners, made in vacation by the Honorable J. L. Fort, Judge of the Twenty-second Judicial Circuit of the State of Missouri, on the 23rd day of March, 1903, for the following reasons:

First. And in explanation of this exception, defendants state that plaintiff, by virtue of an Act of Congress approved January
15 26th, 1900, was only authorized to build a bridge over the Mississippi river, including approaches at either end thereof, extending across the river from bluff to bluff, and for the information of the court defendants state that the plans and specifications prepared by the engineers of plaintiff were only approved by the Secretary of War to the extent of confining said approaches within the river bluffs on either side of the river, thereby fixing the length of the approach to said bridge on the Missouri side of said river at seven hundred and twenty (720) feet; and, therefore, defendants except to the order appointing commissioners to view and assess the damages done to their property, except the strip of seven hundred and twenty (720) feet, by two hundred (200) feet wide, extending from the water's edge to the bluff on the west side of the river, which said strip constitutes the western approach to said bridge; and they charge that that part of said order that seeks to condemn a strip two hundred feet wide from the bluff west over defendant's land is void, for the reason that neither the Act of Congress nor the charter of plaintiff authorizes it to condemn property for any purpose, except for the purpose of an approach to its bridge.

Second. And they except further to said order appointing commissioners, because made without any authority of law, the purport thereof being that under its provisions the plaintiff Bridge Company, through such commissioners, was authorized to view and assess the damages done defendants' property on account of taking for railroad tracks and terminal purposes a strip two hundred (200) feet wide and four thousand (4,000) feet long, whereas the plaintiff company was only chartered to build a bridge across the Mississippi River, and was not chartered to build, maintain and operate a Terminal Railroad for any length under the guise of building an approach to its bridge.

Third. Defendants further except to said order, and especially that portion which authorizes the said commission to appropriate and condemn by assessing the value thereof the two hundred (200) foot strip passing over and across defendant's land west of the approach above described, and state for the information of the court that plaintiff is seeking to build and operate a terminal railroad and not an approach to its bridge, for the reason that it has acquired several hundred acres of land by purchase and otherwise still west of their land, and the same is dedicating to the use of building railroad tracks thereon.

Fourth. Defendants except further to said order appointing commissioners, because it violates Section 7 of Article 12 of the Constitution of Missouri in this: That said order undertakes to authorize said plaintiff Bridge Company, by said commissioners, to con-

demn property for railroad purposes and thereby exceed its
16 charter powers, notwithstanding the inhibitions of the provisions of said section of the Constitution against such usurpation of power.

Fifth. And defendants further except to said order, because there was no agreement between them and plaintiffs, nor any effort to agree on the price of said strip of land for railroad or terminal purposes.

Sixth. And further they except to said order appointing commissioners, for the reason that the plaintiff has not the power in Missouri to condemn defendant's property for any purpose, notwithstanding the late opinion of the Supreme Court of Missouri rendered in this case, which opinion, defendants aver, is in effect contrary to and violative of that provision of the State and Federal Constitution-, each of which prohibits the taking of any person's property without due process of law, and because said decision is an invasion of the legislative department of the State, and revolutionary in its char-ter.

Seventh. Defendants further except, and state that plaintiff's petition filed in the Circuit Court of Scott County, Missouri, on April 24, 1902, does not state facts sufficient to constitute any cause of action, and did not confer on the court any power or jurisdiction to appoint commissioners or to take any steps or proceedings in this case, to-wit: That it does not appear from said petition that plaintiff has any power to exercise the right of eminent domain in the State of Missouri. Further, said petition does not show that plaintiff had commenced the construction of its proposed bridge within one year after January 26, 1901; nor does it show that plaintiff has ever submitted a tracing or drawing of its proposed bridge to and obtain the approval of the same by the Chief — Engineers of the United States Army and the Secretary of War, as required by the Act of Congress approved January 26, 1901, entitled, "An Act to authorize the construction of a bridge across the Mississippi River at or near Gray's Point, Missouri."

Eighth. Defendants further state by way of objection and exception that defendant is a corporation incorporated under the laws of the State of Illinois for the purpose of constructing, maintaining and operating a bridge and approaches thereto over the Mississippi River from a point on the east bank of said river, in the County of Alexander, in the State of Illinois, to a point opposite thereto in the State of Missouri for the passage of railway trains, and at the option of said corporation for the passage of wagons and vehicles of all kinds, for the transit of animals and foot passengers for such reasonable tolls as may be approved from time to time by the Secretary of War, and defendants further say that such corpora-
17 tion, incorporated under the laws of a foreign State for such purpose aforesaid, although permitted by an Act of Congress to erect and maintain such bridge and approaches, yet has no right or power under the Constitution and Laws of the State of Missouri, and under the Constitution of the United States or any Act of Congress, to condemn any property situated in the State

of Missouri to be used by said corporation in constructing, maintaining and operating such bridge and approaches, and that plaintiff had no power by virtue of its charter or the laws of the State of Illinois to condemn property for any purpose, and therefore defendants object and except to the order appointing commissioners and authorizing them to assess damages for the said two-hundred-foot strip to be used for railroad purposes.

Ninth. The defendants further except and object to the report of the commissioners, because the plaintiff bridge company in attempting to enter the State of Missouri, violates Section 962, R. S., 1899, and Section 8, Article XII., Constitution of the State of Missouri.

Tenth. Defendants further object and except, and say that to permit plaintiff to acquire by these proceedings any part of the defendants' land which lies west of the approach described above, approved by the Chief of Engineers of the United States Army and the Secretary of War will violate Section 1 of Article 14, of the Constitution of the United States, because said condemnation will be depriving defendants of their said property without due process of law, and will be a denial to them of the equal protection of the law.

Eleventh. Defendants further object and except, and say that, prior to the beginning of this suit, by deed duly executed, acknowleged and delivered, and recorded in the office of the Recorder of Deeds of Scott County, Missouri, the Cape Girardeau & Thebes Bridge Terminal Railroad Company, a corporation organized under the laws of the State of Missouri for the purpose of constructing, maintaining and operating a railroad in Scott County, Missouri, from Froensdorf Junction, on Houck's Missouri & Arkansas Railroad to the west bank of the Mississippi River, where terminates the plaintiff's bridge, had bought all of the land involved in these proceedings and appropriated the same for public use and the purpose for which it was incorporated, and still so holds and owns said land; and defendants say that the appropriation by the plaintiff of any of said real estate will not only interfere with the use of the said land by the Cape Girardeau & Thebes Bridge Terminal Railroad Company, a Missouri corporation, for the purposes for which it has acquired and appropriated the same, but will utterly
ruin and confiscate the same as the property of the said
18 Terminal Railroad Company; that, therefore, the condemnation attempted by the plaintiff violates the fifth sub-division of Section 1035 and Section 1272 of the Revised Statutes of Missouri of 1899.

Twelfth. Defendants object and except to the amount of damages assessed and awarded them for and in behalf of said Terminal Railroad Company by said commissioners, as grossly inadequate, unfair and unjust.

Thirteenth. They further object and except to the report of said commissioners, which report awards as damages the insignificant sum of eight thousand, one hundred and twenty ($8,120) dollars for the twenty acres of property sought to be condemned, and charge

that such award is and was the result of bias and prejudice on the part of said commissioners, as is evidenced from the gross inadequacy, unfairness and unreasonably small amount so awarded.

Fourteenth. They further object and except to the commissioners' report, and state that, in making the assessment or award of damages aforesaid, they erred in the measure of damages adopted, and failed to consider many of the elements of damages in the case, in this: That they failed to consider the natural eligibility of the property sought to be condemned for a bridge site, and they failed to consider that said property on account of its adaptability for railroad purposes; nor did they take into consideration all the availabilities and adaptabilities of said land for bridge and railroad purposes, but only regarded and assessed its value as farming land.

Fifteenth. In conclusion defendants state on information that the Cape Girardeau & Thebes Bridge Terminal Railroad Company will move the Circuit Court of Dunklin County, at its May Term, 1903, to be made a party defendant in this behalf, having heretofore presented to the Judge of said court, in vacation, at the time of appointing commissioners herein at Bloomfield, March 23, 1903, its application for that purpose, and which application was postponed to the meeting of the May Term of the Circuit Court of Dunklin County; and in view of such application being made for an order permitting it to be made a party defendant, that it may defend its rights to the property involved, these exceptions are made by the defendants, as required by statute, to save and preserve their rights in the premises and the rights of the said Terminal Railroad Company, which may be tried as the law directs at the next term of the Circuit Court of Dunklin County.

Wherefore, defendants pray that the court will direct that the report of the commissioners heretofore made in this behalf and filed in the office of the Circuit Clerk of Dunklin County be set aside, and that the question as to whether the proper amount of damages was awarded defendants by the report of the commissioners may
19 be reviewed by a jury, as the laws and Constitution of the State provides.

M. R. SMITH,
GIBONEY HOUCK, AND
JNO. A. HOPE,
Attorneys for Defendants.

That thereafterwards, to-wit: on May 4th, 1903, the plaintiff filed its motion with the Clerk of the Circuit Court of Dunklin County to strike out part of the exceptions filed by defendants in the cause on Monday, April 13th, which said motion is in words and figures following.

In the Circuit Court of Dunklin County, Missouri, to May Term, 1903.

SOUTHERN ILLINOIS & MISSOURI BRIDGE COMPANY, Plaintiff,
v.
R. G. STONE ET AL., Defendants.

Motion to Strike Out Part of the Exceptions.

Now comes the plaintiff and moves the court to strike out that part of the exceptions beginning at the word "acting" on the second line of the first page of the exceptions and ending at the figures "1903" on the seventeenth line of said exceptions, and reading as follows:

"Acting in this behalf for the Cape Girardeau & Thebes Bridge Terminal Railroad Company, provided leave of court shall be granted for such purpose, and also acting especially for themselves, and state that while it is true they are the nominal defendants herein, it is also true that the Cape Girardeau & Thebes Bridge Terminal Railroad Company is now the owner of the property sought to be condemned in plaintiff's petition and the real party in interest, and under the statutes should be made a party defendant. And further the defendants state that said Terminal Railroad Company has been such owner of the property since and prior to the filing of said petition in the office of the Clerk of the Circuit Court of Scott County, and that acting as aforesaid for themselves and for the said Terminal Railroad Company, on leave of court, they object and except to the order appointing A. J. Matthews, Alexander Wright and Frank Anderson, commissioners, made in vacation by the Honorable J. L. Fort, Judge of the Twenty-second Judicial Circuit of the State of Missouri, on the 23rd day of March, 1903."

Also exceptions numbered "First," "Second," "Third," "Fourth," "Fifth," "Sixth," "Seventh," "Eighth," "Ninth," "Tenth," "Eleventh," and "Fifteenth;" and, for reason of this motion, say, that the matters and things herein referred to constitute no ground in law for exceptions to the commissioners' report, and for the further reason that the matters and things referred *to have been adjudicated and passed upon by the Supreme Court of the State of Missouri,* and all of said matters have been finally disposed of by said court and plaintiff so *pleads res adjudicata in bar thereof.*

WILSON CRAMER AND
W. H. MILLER,
For Plaintiff.

No action was taken on this motion.

That at the May Term of said court defendants with leave of court, on June 30th, 1903, filed their amended answer, notice of 30 days having been given that it would be filed at that time with a copy of the answer attached, by delivery of same to plaintiff's attorney, which is in words and figures following:

STATE OF MISSOURI, *County of Dunklin, ss:*

In the Circuit Court, Dunklin County, Missouri, to May Term, 1903.

SOUTHERN ILLINOIS & MISSOURI BRIDGE COMPANY, Plaintiff,
v.
R. G. STONE, R. M. FINLEY and NANNIE E. FINLEY, Defendants.

Amended Answer.

Come now the defendants in the above entitled cause with leave of court first had and obtained, and for their amended answer, state that plaintiff Bridge Company is not a corporation, was never lawfully incorporated under and by virtue of any existing law of the State of Illinois, and its claim of incorporation under the laws of said State is false; and further defendants state that it has no power under the laws of Illinois to condemn property for bridge purposes or any other purpose, and that its claim of such power is false.

Defendants further state that said plaintiff is not lawfully incorporated under the laws of Illinois, nor the laws of Missouri, nor any other State; and that it is not in truth and fact a corporation, and not being a corporation, it has no power to exercise the right of eminent domain in this or any other state, and no power to condemn the property described in its petition for bridge purposes, or any other purpose, all of which defendants are ready to verify, and which they accordingly do.

Further answering and as another defense, defendants state that plaintiff *has only power under the* Act of Congress authorizing it to build, operate and maintain a bridge and approaches thereto, over the Mississippi River at the places described in said Act of Congress approved January 26, 1901, to which reference is here made, and other Acts of Congress relating to bridges over navigable
21 rivers, and the pretended charter under which it is now assuming to act in the building of said bridge and approaches thereto.

And defendants further aver, on the other hand, that plaintiff has *no power to condemn the property described in its said petition beyond the seven hundred and twenty (720) feet,* the length of the approach to said bridge on the Missouri side of said Mississippi River, for the reason that by the terms of said Act of Congress, approved as aforesaid, on January 26, 1901, the approaches to said bridge as to length, height, breadth and general character were placed *under the supervision of, and to be determined by the Secretary of War,* or the Civil Engineers of his department, and that, by said Act of Congress, that power was vested *alone* in him.

Defendants aver that the said Secretary of War has discharged his duty in that behalf *by so fixing the height, breadth, length and general character of said approaches,* and that he has in the manner provided for by said Act of Congress *established the length of the approach, on the Missouri side of said river,* at *seven hundred and twenty (720) feet as above stated,* as evidenced by the Secretary of

War's certificate hereto attached and made a part of this answer, and not at forty-five hundred (4,500) feet, or any other distance, as claimed by plaintiff company.

Defendants state that plaintiff is, by the terms of its charter, and said Acts of Congress, and cognate Acts of Congress, and the fixing of said western approach to said bridge at seven hundred and twenty (720) feet by the Secretary of War as aforesaid, *confined unalterably to that approach, and to the length of seven hundred and twenty (720) feet as aforesaid,* and not to any other length, *and that as a matter of law, the court should declare the length of said approach to be* seven hundred and twenty (720) feet, and nothing over that length or distance.

However, if the court, in its judgment, should not consider the *length of said approach a question of law,* then, as a matter of right and by proper procedure, that question should be submitted by the court as one of fact, under proper instructions, to the jury, *and on this point the defendants pray the judgment of the court.*

Defendants yet answering, and as another defense, aver that the order appointing commissioners in this proceeding was made in vacation and *ex parte* by the Judge of the Circuit Court of Dunklin County, and not by the Circuit Court of said County, on the 23rd day of March, 1903.

And further, defendants charge and aver that said order was made without authority of law and in excess of the judge's power, for the reason, *first,* that from the charter, on its face, the
22 Act of Congress authorizing it to build the bridge and approaches thereto, and plaintiff's petition, it is manifest that said plaintiff has no authority whatever to condemn the property described in its petition, or to own or hold property to be used for railroad purposes, and on and over which to build a terminal railroad, "or roadway and yards" under the fraudulent pretense of building the western approach to its bridge, the law to the contrary notwithstanding.

And defendants further charge and aver *that said order is void for the reason, second, that it violates that fundamental principle of law, that no corporation can exercise franchises not granted it by the terms of its charter, and in this connection defendants state, that the charter of said plaintiff only confers power on it to build said bridge and approaches thereto, and does not confer power on it to build a terminal railroad, "roadways and yards," as it is seeking to do under the false pretense of building an approach* to its bridge as aforesaid.

Defendants state that the taking of property *by such void orders and judgments is in violation of that fundamental principle of constitutional law, Federal and State, that declares that "no person shall be deprived* of life, *liberty or property without* due process of law, nor deny any person within its jurisdiction the equal protection of the law," and on these constitutional provisions, defendants rely for the protection of their rights in the premises, and now and here plead them against plaintiff's usurpation of charter powers and pretended lawful claim to condemn their land; and aver that it has no right

and no authority whatever to take that strip of their land, two hundred (200) feet wide, for a distance of approximately four thousand (4,000) feet, west of and beyond the established approach to said bridge of the said seven hundred and twenty (720) feet, as fully hereinbefore described.

Defendants further answering, and as another defense, aver that said order appointing said commissioners violates Sections 7 of Article 12 of the Constitution of Missouri in this, that said order clothes the plaintiff Bridge Company with authority to appropriate their property, notwithstanding that under its charter it has no power to take defendants' property for railroad, roadway or yard purposes, such purposes being clearly beyond its charter power as is manifest from the fact of said charter by an inspection thereof.

Wherefore, defendants pray that the court will, by the proper procedure, which it has authority to adopt, protect their rights and lawful claims in the premises, and thereby prevent the condemnation of that two hundred foot strip of land approximately four thousand (4,000) feet in length above described; and defendants further pray that the Cape Girardeau & Thebes Terminal Railroad
23 Company be made a party defendant to this suit, so that it may defend its interests herein, it being the substantial party in interest as the proofs of the trial will establish.

And defendants pray for all other orders and judgments that would be just, and as claimed by their exceptions filed in this behalf in this court, on the 13th day of April, 1903.

GIBONEY HOUCK,
JOHN A. HOPE, AND
M. R. SMITH,
Attorneys for Defendants.

M. R. Smith, being sworn, on his oath states that he is one of the attorneys of record for defendants in the above cause, and concerning the facts in the foregoing petition he states that — of his own knowledge are true, and those derived from information of others, he believes to be true.

M. R. SMITH.

Subscribed and sworn to before me this 30th day of June, 1903.

W. P. FINCH,
Circuit Clerk, Dunklin County, Mo.

Thereafter, as appears by the record proper, the cause came on for trial, June 30, 1903, at the May Term of said Circuit Court, upon the foregoing exceptions and amended answer of defendants, and, after a hearing before his Honor, Judge Fort, and a jury, the following verdict and judgment were rendered on the first day of July, 1903, in said cause, as appears by the record proper therein in words and figures as follows, to-wit:

Verdict.

We, the jury, find the defendants, R. G. Stone and Nannie E. Finley, and R. M. Finley, for the appropriation of the following described real estate, situated in the County of Scott, State of Missouri, to-wit: A part of the S. E. and S. W. parts of private survey No. 794, in twp. 30, R. 14 east, and in lot 2 of the N. E. ¼ of sec. 2, twp. 29, R. 14 east, being a tract of land 200 feet wide, 100 feet on each side of the center line of the approaches to the Southern Illinois and Missouri Bridge Co., as located and platted, beginning at a point on the east line of fractional sec. 24, twp. 30, R. 14 east, 1,240 ft. from the S. E. corner of said fractional sec.; thence run south 70 degrees 45 minutes east, 765 feet; thence by a one degree curve to the right 880 4/10 ft.; thence south
24 59 degrees 45 minutes east, 924 8/10 ft.; thence by a 2 degree 30 minute curve to the left, 1,289 3/10 ft.; thence N. 87 degrees, 57 minutes, east to west bank of the Mississippi River. Said center line intersects the north line of twp. 29, 100½ feet west of the N. W. corner of lot 2 in the N. E. quarter of section 2, twp. 29, R. 14 E., and also intersects the west line of said lot 269 1/10 ft. south of the N. W. corner of said lot 2, have been damaged in the sum of ten thousand dollars.

T. A. MEDLEY, *Foreman.*

Judgment.

It is, therefore, considered and adjudged that defendants have and recover of and from the plaintiff the sum of ten thousand dollars as their damages by reason of the appropriation of the land in the verdict described by the plaintiff, together with the legal cost herein expended, and that therefor they have execution. It further appearing to the court that plaintiff has heretofore paid into court the sum of $8,120.00 on account of said damages; now, therefore, upon payment by the plaintiff of a further sum of $1,880.00 into court for the use and benefit of defendants, it is ordered that the easement for the use and purposes of plaintiff, its successors or assigns, for bridge approach, roadways, terminal yards and necessary appurtenances be vested in plaintiff and divested of defendants and their assigns in the real estate hereinbefore in the jury's verdict, which is made a part of this judgment and decree, fully described.

To the rendering of said judgment by the court, defendants and exceptors objected and excepted at the time.

The following further entries appear in the record proper of said court at said May Term, 1903, to-wit:

July 2, 1903, Defendants' motion for new trial filed.

July 2, 1903, Defendants' motion in arrest of judgment filed.

July 2, 1903, Defendants' motion for a new trial overruled.

July 2, 1903, Defendants' motion in arrest of judgment overruled.

It further appears by the record proper of said Circuit Court in said cause at said May Term, 1903, that on July 2, 1903, defendants filed an affidavit, in due and statutory form, for an appeal to the Supreme Court, and prayed an appeal accordingly to said Court; and the said Circuit Court thereupon made the following order of appeal, and furthermore granted said defendants time to file bill of exceptions, as appears by the record proper, as follows, to-wit:

"Now come the parties by their attorneys, and the court
25 having considered the affidavit for said appeal herein filed by defendants, doth grant them an appeal to the Supreme Court of this State.

Now come the parties by their attorneys and the defendants are given ninety days from this date in which to file and perfect their bill of exceptions herein."

At the same term (as appears by the record proper) defendants were granted leave to file an appeal bond (within ten days after adjournment of said court) in the sum of $2,000.00, which bond was, within said time, duly filed and approved, as appears by entries in the record proper of said court.

It further appears by the record proper of said Circuit Court in said cause that there was filed therein, August 19th, 1903, (within the time above allowed by the foregoing order for filing bill of exceptions), a written stipulation and agreement of counsel for the respective parties to this cause, whereby the time allowed to defendants to file the said bill of exceptions was extended to January 1st, 1904, which said stipulation (as appears by the file marks of the Clerk of said Circuit Court thereon), was filed in said Circuit Court and was made part of the record thereof, August 19, 1903.

And it further appears, by entry in the record proper of said court, December 22, 1903, within the said time extended, that the defendants filed their bill of exceptions herein, as witness the following entry, on said date, to-wit:

"Now come the defendants and exceptors herein in open court and with leave of court file their bill of exceptions in the above entitled cause."

And on the bill of exceptions appears the following entry by the Clerk of said Circuit Court:

"Filed December 22nd, 1903. W. P. Finch, Clerk."

And the bill of exceptions so filed, as appears by the record proper, was in words and figures as follows, to-wit:

26 *Bill of Exceptions.*

Defendants, the exceptors, to sustain the issues on their part, introduced:

W. E. ANGIER, being sworn, testified as follows:

Direct examination:

Br. Mr. SMITH: State your name to the jury?

A. W. E. Angier.

Q. Where do you live?
A. Thebes.
Q. What is your business?
A. Civil engineer.
Q. Building what?
A. Bridge.
Q. How long have you been engaged in the work?
A. Since 1887.
Q. What did you say you were doing?
A. Bridge work.
Q. What are you doing now?
A. Since a year ago last January I have been at Thebes.
Q. You, at the present time, are at Thebes?
A. Yes, sir.
Q. What are you doing there?
A. Resident engineer.
Q. Of what?
A. The Thebes Bridge.
Q. Who is building the Thebes Bridge?
A. The Southern Missouri—the Southern Illinois and Missouri Bridge Company.
Q. When did they commence to build that bridge?
A. I came here as their engineer the 20th of January, a year ago; didn't begin any construction actually until along in April.
Q. I will ask you to state to the jury when the Southern Illinois and Missouri Bridge Company began the work of locating that bridge?
A. They had engineers there a year before I was there, making a survey.
Q. That was in 1900?
A. No, sir; 1901.
Q. Do you know what kind of work they did?
A. They made surveys.
Q. What was the purpose of surveying?
A. To tell the most feasible place to cross the river.
Q. How long did you say it took them to locate the place at which to build the bridge?
A. I think they had parties there about eight months.
Q. About eight months?
A. Yes, sir.
Q. Did they do any sounding work?
A. Yes, sir; they sounded the river up and down for about three miles.
27 Q. What do we understand by sounding?
A. I suppose you understand it to mean sounding the water to see what character the bed is.
Q. Did they do that?
A. Yes, sir.
Q. What kind of bottom have they got there?
A. Rock in places and sand in places.
Q. Rock in places and sand in places?
A. Yes, sir.

Q. Do you know whether or not they sounded through there on a straight line of the approach, between the water and the elevation of the hill on the Missouri side, or was it necessary?

A. It wasn't necessary as far as they were concerned.

Q. How is the approach supported from the water on the Missouri side to where the bluff begins?

A. It sets on arches.

Q. What kind of arches?

A. Concrete.

Q. I understood you to say that the line across the river, that the bridge follows has a rock bottom?

A. Yes, sir; and overlaid in places by sand, but rock under that.

Q. Is that of much importance to the construction of the bridge?

A. Yes, sir; it is ordinarily.

Q. What is it that makes it important?

A. Because the foundations will not settle.

Q. What has it to do with the expense of building the bridge?

A. It depends upon the depth you get it.

Q. What depth did you find it here?

A. Part of it pretty deep.

Q. How deep?

A. Sixty or seventy feet.

Q. Where is that depth?

A. In the center of the river.

Q. The rest of them are reasonably shallow?

A. Yes, sir.

Q. The channel is deep, is it?

A. No, sir.

Q. Isn't the channel deep there?

A. No, sir; it is considerable sand over the rock.

Q. The channel is deep?

A. No, sir; but it is the deepest part of the river.

Q. Is that considered a narrow place?

A. Yes, sir.

Q. How wide is it?

A. 2,700 feet.

Q. It is not quite a half of a mile?

A. Yes, sir; about a half of a mile.

Q. Now, then, how wide is the place between the water's edge to where the ground raises to the hill on the Missouri side?

A. About 700 feet.

Q. About 700 feet?

A. Yes, sir.

Q. How wide is it on the Illinois side?

A. About 550 feet.

Q. About 550 feet?

A. Yes, sir.

Q. I will ask you to state to the jury whether or not this place you selected is about as narrow as any place in that vicinity?

A. Yes, sir; it is as narrow as any place within a few miles of there.

Q. As narrow as any place within a few miles of there?
28 A. Yes, sir.
Q. I will ask you whether or not the hills on the Missouri side run parallel or straight with the river, or do they project toward the river?
A. Generally they run in a parallel direction.
Q. How about the point where the bridge is located?
A. About parallel.
Q. Is it not a fact that the hill there runs out a little towards the river?
A. No, sir.
Q. Now, whose land lies north of the Stone land?
A. The Hobb's land.
Q. I will ask you whether or not the hills do not circle around and leave quite a bottom there between the edge of the hill and the river on the Hobb's land?
A. Yes, sir; between the water and the edge of the bluff.
Q. Then, if you were to go a quarter of a mile from where you located the bridge, you would get into the bottom?
A. No, sir.
Q. How far would you have to go?
A. About three quarters of a mile.
Q. To get on to the Hobb's land?
A. Yes, sir.
Q. How high would the trestle be over the Hobb's land, if the company had built the bridge there?
A. Didn't consider building it there.
Q. I am not asking you that, I am asking you this, how high would it be?
A. About seventy feet high.
Q. How far would you have to run it west into Missouri, if they undertook to build it there?
A. That would depend upon the grade they had settled upon.
Q. I mean the grade you have now?
—. ——.
Q. It would not touch ground until it got to the Hillman track, would it?
A. No, sir; it would go back of that.
Q. You would have to trestle on the other side?
A. Yes, sir.
Q. How would it be on the Illinois side of that place?
A. I- would go right into the bluffs.
Q. You would have to circle around them or go into the bluffs?
A. Yes, sir.
Q. Now, suppose they had built that bridge south of where it is located—how about it there?
A. Bluffs on both sides.
Q. How is it compared with the Stone land?
A. About the same.
Q. How is it any higher?
A. A little higher.

Q. Don't the bluff rather extend farther back into Missouri than it does on the Stone land?

A. I don't know—I never examined that.

Q. You never examined the topography of the land?

A. No, sir; there is a creek that runs in there, and I suppose there is a valley in there.

Q. You say the engineers were something like eight months surveying and sounding that community for the selection of the line?

A. Yes, sir.

29 Q. And the line they selected, was it the most feasible line over which to build the bridge?

A. Yes, sir; they selected it as the most feasible.

Q. What do you mean by being the most feasible?

A. Considering the railroad companies that were going to use it and their location.

Q. What railroads are going to use it?

A. The Eastern Illinois, the Cotton Belt and the Valley——

Q. That belongs to the Missouri Pacific system.

A. Yes, sir.

Q. How many railroads do you say cross there now, or will cross there, when the bridge is constructed?

A. There will be four.

Q. You say there is not five?

A. No, sir.

Q. Aren't you mistaken about that?

A. The Illinois Central, the Missouri Pacific, the Cotton Belt and the Frisco.

Q. Now, you say that place was selected because it was feasible for these big railroads to cross?

A. Yes, sir.

Q. No other purpose?

A. No, sir.

Q. I will ask you to state to the jury whether or not the expense of building the bridge entered into the location?

A. They never figured on the cost of any other location; they decided it was the most feasible.

Q. You mean that it was the best place over which to build the bridge?

A. Yes, sir; they decided it was the best place to build the bridge.

Q. Can you state, from your information as an expert, how much more, or how much less, it would cost to build the same character of a bridge one-half of a mile north of there across the river?

A. No, sir.

Q. Have you ever done any figuring on the building of the same character of a bridge one-half of a mile south of there?

A. No, sir.

Q. Would you like to guess on those propositions?

A. No, sir.

Q. You don't think you would?

A. No, sir.

Q. Didn't you make a little computation on that subject once?

A. No, sir.

Q. Would you like to make one?
A. No, sir.
Q. You don't want to make any?
A. No, sir; I could not make any estimate.
Q. That is the cheapest place, wasn't it?
A. It is the most feasible.
Q. One of the elements of availability, as made there, refers to the cost of building the bridge, doesn't it?
A. Yes, sir.
Q. Now, you say they were about eight months locating this survey?
A. They were about eight months working there—they commenced in April, and along in the fall they were ordered to make a report.
Q. This suit was commenced about the middle of April, 1902, wasn't it?
A. Yes, sir.
Q. After the commencement of the suit, Mr. Angier, I will ask you to state to the jury whether or not your company made any other surveys?
A. No, sir.
Q. I will ask you whether they did not make a survey north of there?
A. No, sir.
Q. I will ask you whether or not they did not make a survey south of there?
A. No, sir; the surveys were all made the first year——
Q. I mean after this suit was brought?
A. No, sir; it was the summer before this suit was brought.
Q. I mean to ask you whether or not there was other surveys made after this suit was brought, in order to change the route?
A. No, sir.
Q. Would you have known it if it had been?
A. Yes, sir; I certainly would.
Q. Were you there at that time?
A. Yes, sir.
Q. I will ask you whether or not the company did not get the opinions of the engineers as to whether or not the route could be changed profitably, to your knowledge?
A. I have no knowledge of it, if they did.
Q. Do you say they didn't?
A. I have no knowledge of it, if they did.
Q. Now, Mr. Angier, here is a profile of the line of that approach to the bridge on the Missouri side, and I will ask you to state as near as you can how many feet it is from the water's edge or low water mark to where the line strikes the hill—just figure it up there?
A. It is about nine hundred feet—something like that.
Q. How far is it to where you end the concrete approach there?
A. About 700 feet from this first pier here.
Q. You commence numbering the piers from the Illinois side?
A. Yes, sir.
Q. How far apart are those piers?

A. 518, 523 and 671 feet.
Q. They are not the same distance apart?
A. No, sir?
Q. You say the distance between this pier and the hill is 700 feet?
A. No, sir; to the end of the concrete work—and then we fill an embankment of 200 feet more before we get to the hills.
Q. Where is the cut?
A. It is about grade; then we cross a little valley and get into the skirting on the side of the hill here.
Q. What is the depth of the first cut?
A. It is about grade—about two and one-half feet.
Q. How do you make that?
A. Cut the top of it one and one-half feet.
Q. Then you cut it off one and one-half feet?
A. Yes, sir.
Q. Then you cross over a little valley?
A. Yes, sir; a kind of a gully.
Q. How many feet?
A. Seventy or seventy-five feet.
31 Q. How deep is that?
A. About twelve or thirteen feet.
Q. Then you enter another elevation, do you?
A. Then we get into the first hill.
Q. Then you get into the first hill?
A. Yes, sir.
Q. How far or long is that cut?
A. About 1200 feet.
Q. How deep is it at the deepest point?
A. About 35 feet approximately.
Q. What do you strike then?
A. Then we cross a little valley.
Q. How much of a valley—how many feet in length?
A. About 350 feet long.
Q. About 350 feet long?
A. Yes, sir.
Q. How deep is the deepest place?
A. Twenty eight feet.
Q. Twenty-eight feet?
A. Yes, sir.
Q. After you get through that what do you strike?
A. Cross another spur of a hill.
Q. Do you make any fill?
A. No, sir—a cut.
Q. How much of a cut in length?
A. About 350 feet.
Q. How deep at the deepest place?
A. About 26 feet.
Q. What do you next strike?
A. Cross another little valley.
Q. How much in length?
A. About 400 feet.
Q. About 400 feet?
A. Yes, sir.

Q. Then do you get to another cut?
A. Yes, sir.
Q. How deep is that cut?
A. Forty-three—42 or 43 feet.
Q. Forty-two or forty-three feet?
A. Yes, sir.
Q. What kind of work do you strike after getting through that cut?
A. We are through that cut all the way through the Stone land.
Q. You don't have any more cuts, do you?
A. No, sir; it is one continuous cut from this point.
Q. How long is it?
A. It is not marked here where the Stone land ends.
Q. How long is the cut?
A. It is something like 1,500 feet.
Q. Tell the jury the length of what you call the approach to that bridge?
A. Do you want it through the Stone land?
Q. About how long is the entire approach?
A. About 12,000 feet.
Q. That is over two miles?
A. Yes, sir.
Q. How wide is that bridge?
A. Clear width 29 feet.
Q. Twenty-nine feet?
A. Yes, sir.
Q. That is for a double track?
A. Yes, sir.
Q. What provision are you making for a wagon road across that bridge, if any?
A. Not any.
Q. That is simply optionary?
A. Yes, sir.
Q. You are arranging for a double track across the
32 bridge?
A. Yes, sir.
Q. How wide is the bed of the dump or track?
A. Sub-grade is 34 feet.
Q. How many tracks will you be able to put on that?
A. Two tracks.
Q. How high is that bridge, Mr. Angier, from the water to the top?
A. It is about sixty-five feet clearance to the under side of the bridge to the water.
Q. Then about 150 feet from the top of the bridge to the water?
A. Yes, sir.
Q. Your bridge is 28 or 29 feet wide, clearance inside, and 150 feet high?
A. Yes, sir, from the water.
Q. And it is built for the purpose of having a double track?
A. Yes, sir.

Q. And no provision made for a wagon road?
A. No, sir.
Q. Suppose the company wanted to put a wagon road across there, would they be able to do it?

Mr. MILLER: We object to that, if the court please—it is a possibility.

Q. Can the bridge be used for a common wagon road?
A. No, sir.
Q. There is no way to drive across there?
A. No, sir; only along the railroad.
Q. There is no arrangement made for it?
A. They only decided to use it for railroad purposes.
Q. It could not be used for any other purposes in its present condition, could it?
A. No, sir; and not in its proposed condition.
Q. The tracks are about fourteen feet apart?
A. Yes, sir.
Q. So twenty-eight feet would be the distance required to locate two tracks according to the rule?
A. No, sir; thirteen feet center.
Q. That would leave two feet for a wagon road?
A. Yes, sir—well you could put a wagon track on one track and a railroad track on the other, I suppose.
Q. I will ask you whether or not there is a public road leading to this bridge on the Missouri side?
A. There are two public roads passing under it.
Q. Not leading up to it?
A. No, sir.
Q. No possible way to get to it?
A. Yes, sir; drive up to it.
Q. What kind of a grade would they have to go?
A. One road is about fourteen feet above grade.
Q. Is there a public road up there by the Stone land?
A. Yes, sir.
Q. Isn't it an ordinary country road?
A. No, sir; I think it is a public road.
Q. After entering the hill about sixty-five or seventy feet over the river, you make a small cut of one and one-half foot, then you have a fill, and then another cut, and then another little fill——
A. Quite a big fill there.
33 Q. Then you have another cut of about twenty-eight feet deep?
A. Yes, sir.
Q. Then another fill?
A. Yes, sir.
Q. And then another cut?
A. Yes, sir.
Q. And then another fill?
A. Yes, sir.
Q. On that you expect to locate railroad tracks?
A. Yes, sir; just two tracks.

Q. Mr. Angier, did you ever see any complete approved plans and designs of this bridge and its approaches?
A. Every one that has been made I made.
Q. You made them?
A. Yes, sir.
Q. What did you do with them after you got them made?
A. I sent them to the engineer.
Q. Do you know whether or not the plans you made were approved by the Secretary of War and his engineer?
A. That was made before I came here.
Q. Have you ever seen them?
A. Yes, sir.
Q. Have you got them?
A. Yes, sir.
Q. Have you got them with you?
A. No, sir.
Q. You did not bring them?
A. No, sir.
Q. Do you know the distance of the approach on the Missouri side as fixed by the Secretary of War or his engineers?

Mr. MILLER: We object to that, if the court please, because it is not the best evidence—we object to the evidence itself and to the incompetency of the evidence.
The COURT: Objection overruled.
Mr. MILLER: We except.

A. The Secretary of War didn't fix it.
Q. Who did?
A. The engineers drew their plans showing the different constructions—he was only concerned in the bluffs as to the blocking the river——
Q. I will ask you whether or not the Secretary of War, or the engineers in his office, didn't approve the approaches to the bridge on this side, and fixing it at 720 feet?
A. They approved our plans.
Q. That was the approach as fixed by the Secretary of War, wasn't it?
A. He approved our plans.
Q. Look at that and see if it is not a copy (hands witness a paper); now, state what that says?
A. That says the concrete part of the approach on the Missouri side of the Thebes Bridge goes to the hill.
Q. That is the approach and the only part of the approach he approved?
A. That is the only part of the approach he felt himself concerned with at all.
Q. Well, it is the only part he approved?
A. Yes, sir.
Q. You know nothing about the act of congress—you have never read the Act of Congress as to what his duties are?
A. No, sir.

Q. That the company had to have the Secretary of War's approval of the bridge and its approaches?

34 A. Yes, sir; its approval of the engineers' report to the crossing of the stream.

Q. Tell the jury what the paper is you hold in your hand?

A. This is a plate showing the location of the Missouri approach to the Thebes Bridge and the property owned by the Southern Illinois and Missouri Bridge Company, and other parties owning land along there.

Q. Show the jury where the river is?

A. This is the Mississippi River, the west bank.

Q. How much bridge work, trestling and work of that kind is done through there?

A. There is no trestling—we put in concrete arches.

Q. It is composed of cuts and fills?

A. No, sir; solid embankment all the way.

Q. It is built for a double track?

A. Yes, sir.

Q. What is the green colored line?

A. Land owned by the Southern Illinois and Missouri Bridge Co.

Q. And also the line of the Southern Illinois and Missouri Bridge Company?

A. Yes, sir.

Q. How long is that green line?

A. About three miles.

Q. What does it connect with on the west end?

A. Nothing.

Q. It connects with the railroad here at the end of the approach, don't it?

A. That is simply a "yard" out there.

Q. This is three miles from the Mississippi River?

A. Yes, sir; approximately three miles.

Q. Is this point on the Mississippi River (indicates)?

A. No, sir.

Q. This is three miles here (indicates) from the Mississippi River?

A. Yes, sir.

Q. This is the west end of the approach to the bridge?

A. No, sir; it is here (indicates).

Q. What is this here (indicates)?

A. This is the "yards."

Q. Then the Southern Illinois and Missouri Bridge Company owns railroad yards?

A. Yes, sir.

Q. What is this here (indicates)?

A. Land they bought in order to get the right of way.

Q. What is this in here (indicates)?

A. The same—they bought that in order to get the right of way.

Q. Where are you working on this?

—. Working pretty much all over it.

Q. You are not doing anything over there next to the river?

A. They are driving sheet piling to-day.
Q. They have just commenced that?
A. No, sir; been working there pretty continuously for several weeks.
Q. Working there for several weeks?
A. Yes, sir.
Q. What have you done?
A. We have the highway arch nearly completed and we have the grading nearly done.
35 Q. What is the difference in the levels of the lines of the approach of the bridge where my finger is, and up there where it enters the hill (indicates)?
A. Do you mean the railroad track or the ground itself?
Q. The ground itself?
A. About where you indicated there the ground is higher where we first hit the hill, or ridge, and it is about twenty feet lower than this high point (indicates).
Q. Do you know where the trestle of the Gulf Railroad is?
A. Yes, sir.
Q. Do you know how high that is above the level?
A. The last high water just about come up to the trestle and the trestle is about twenty-five feet high.
Q. It is about twenty-five feet above high water mark?
A. It is more than that, something like fifty feet.
Q. How much higher is the trestle than the bridge?
A. I don't know exactly.
Q. If you had built your bridge across where the trestle is, how high would you have had to make the trestle there?
A. I don't know.
Q. Wouldn't it be at least seventy-five feet high?
A. I don't know what the grade is there.
Q. Then if you had gone on the trestle, you would have gone through the valley?
A. We would have come up the hill and come around the corner here (indicates).
Q. It would have been practical to have built the bridge there, would it?
A. No, sir.
Q. You selected the most practical route to build the bridge?
A. Yes, sir.
Q. Where does the Cotton Belt run?
A. It runs right along here (indicates).
Q. Where is the incline to the Cotton Belt?
A. At Gray's Point.
Q. How far above Thebes?
A. About a mile.
Q. Now, is there any railroad running down next to the river under that bridge?
A. Yes, sir.
Q. What road?
A. It was Houck's Missouri and Arkansas.

Q. And what now?
A. The St. Louis and Gulf.
Q. Is there any incline there?
A. Yes, sir.
Q. What road does it belong to?
A. The St. Louis and Gulf.
Q. And that belongs to the Frisco now?
A. Yes, sir.
Q. That is all.

Cross-examination:

By Mr. MILLER: You say you are the engineer in charge of the construction of that bridge?
A. Yes, sir.
Q. And have been there for more than a year?
A. Yes, sir.
36 Q. I will ask you, if you know who owned land that it first crosses on the west bank of the river, at the time you went to work there?
A. From the best of my knowledge, we tried to purchase it from Mr. Stone, who they said lived on Big Island.
Q. From Mr. Stone?
A. Yes, sir.
Q. When was the western approach to that bridge located?
A. The latter part of January or February.
Q. What year?
A. 1902.
Q. The latter part of January or February, 1902?
A. Yes, sir.
Q. Was the final location made at that time indicated by stakes or anything on the ground?
A. Yes, sir.
Q. How?
A. Indicated by stakes every hundred feet.
Q. Were they numbered?
A. Yes, sir.
Q. Where did those stakes commence?
A. Back on the Cotton Belt.
Q. Running from west to east?
A. Yes, sir.
Q. How far back did you commence, Mr. Angier, from the river?
A. Why, the stationing here given runs to station 134—139.
Q. That would be a little over 10,000 feet?
A. Yes, sir; a little over 13,000 feet.
Q. A little over 13,000 feet?
A. Yes, sir.
Q. That is a way back here on the Cotton Belt?
A. Yes, sir.
Q. You stated awhile ago that the approach proper to this bridge is how far from the river?
A. About 12,000 feet.

Q. I will ask whether or not that land from Gray's Point to the Bluff is necessary for the approach to that bridge?

A. Yes, sir.

Q. Could the bridge be operated without it?

Mr. SMITH: We object to that, if the court please, because it is irrelevant, immaterial and incompetent and because the Bridge Company has no power to own by purchase or condemnation lands for railroad yards or tracks under the guise of owning a bridge approach.

The COURT: Proceed.

Defendants objected and excepted to the ruling of the court at the time, the objection being overruled.

Q. Could the bridge be operated and constructed without it?

A. It could not be constructed and operated without it, unless we had some land like it.

Q. What is the character of the land—why is it necessary to build that bridge approach out 12,000 feet?

A. We built it out that distance for two reasons, one was to connect with the Cotton Belt, and the other was to get the grade of the bridge at Gray's Point with the Illinois side.

Q. I will ask you to look at this map and tell the jury what it is?

37 A. It is a topographical map of the country on both sides of the river showing the location of the bridge.

Q. Point out that on the west side?

A. This is the west bank——

Q. What do these marks indicate?

A. These wavy marks indicate the contours ten feet lower in elevation than the adjacent one; where the contours come close together it indicates a very steep slope, and where not close indicates low.

Q. What does this indicate?

A. Grass.

Q. What is it running this way (indicates)?

A. It is cultivated ground—the topographical marks put here for trees is not very well.

Q. This land from the west bank of the river to the bluff is not in cultivation, is it?

A. It has been, but wasn't then.

Q. The distance across here (indicates), you say, is about 900 feet?

A. Yes, sir.

Q. Can you tell from the marks there just how high that bluff is where you strike the top of it, where the bridge strikes it?

A. It is about sixty feet.

Q. Then the bridge crosses that valley sixty feet in the air?

A. Yes, sir.

Q. No obstruction to the passage from one part to the other to any parties using the land?

A. No, sir; none whatever.

Q. What is the character of the land after you pass there?

A. It is very rough—here is a valley that comes up here, and another ridge, and another valley and another ridge and another valley——

Q. Then when you strike the top of the valley, if the western approach of the bridge stopped there, it would leave you a number of cuts and fills and no other point to where the bridge could be approached for a distance of how far?

A. About 12,000 feet.

Q. This land is absolutely necessary to lend any outlet to the bridge?

A. Yes, sir.

Q. Can you fix the date you made the final location of that western approach to the bridge?

A. It was from the middle to the latter part of February.

Q. From the middle to the latter part of February?

A. Yes, sir.

Q. What year?

A. 1902.

Q. 1902?

A. Yes, sir.

Q. Do you remember of attending court at Benton in April, 1902?

A. I wasn't there.

Q. You told Mr. Smith that this point was selected for the building of this bridge, because it was the most feasible?

A. Yes, sir.

Q. That was the point you was directed to make the plans for?

A. Yes, sir; it was settled, when I went there.

38 Q. As far as the land on the western side is concerned a point immediately above or below would be just as feasible?

A. Yes, sir.

Q. This particular two hundred feet you are now seeking to condemn would not be any more feasible than the 200 feet above or below it.

A. No, sir.

Mr. SMITH: We object to leading the witness.

Q. What is the narrowest place on the river along there?

A. I would say there wasn't much difference between where we cross it and 1,000 feet below and possibly 1,800 or 2,000 feet above.

Q. How about it at Gray's Point?

A. There is an island in the river and it would be narrower.

Q. It would be narrower?

A. Yes, sir; a trifle narrower.

Q. You never made any of the soundings in the river there.

A. No, sir.

Q. For what purposes was this land being used when you found it?

A. Farming land.

Q. How about the bluffs and hills?

A. They were in timber—uncultivated.

Q. Do you know how many acres this right of way takes out of the Stone farm?
A. About twenty acres.
Q. Twenty acres?
A. Yes, sir.
Q. Do you know how many acres there was in the Stone farm proper?
A. I think there was a trifle over three hundred acres.
Q. A trifle over 300 acres?
A. Yes, sir.
Q. On which side of the right of way you are seeking to acquire is the greater part of the Stone farm?
A. On the north.
Q. On the north?
A. Yes, sir.
Q. About what proportion of it is below?
A. About one-third.
Q. About one- third?
A. Yes, sir.
Q. On which side is the most of the cultivated land?
A. On the north.
Q. About what proportion of the cultivated lands is on the south?
A. Very little.
Q. Very little?
A. Yes, sir.
Q. Did I understand you to say that there was a public road that turns along the foot of the hills?
A. There is a road there. I don't know whether or not it is a public road.
Q. Running north and south?
A. Yes, sir.
Q. Where is the other road you spoke of?
A. Up the valley going under this trestle on the Gulf road, going through the Stone land.
Q. That is all.

Re-direct examination.

By Mr. SMITH: Did you ever have any other employment in the supervision of bridge building before this?
A. Yes, sir.
Q. What bridge?
A. My first work in 1887 was in Mississippi, and Fort
39 Madison, and I was at Memphis; since 1892 I have been with the Illinois Central in the bridge department.
Q. Is that the bridge over which the Iron Mountain crosses at Memphis?
A. Yes, sir.
Q. How does that bridge the river?
A. It goes up to the bluff on the Memphis side on a trestle, and on an iron viaduct on the Arkansas side.
Q. The bridge was built after the railroad was built?
A. Yes, sir.

Q. The railroad owns those tracks so they can get on the bridge?
A. No, sir.
Q. What is the name of the bridge?
A. Kansas City and Memphis Railway and Bridge Company.
Q. Does the railroad coming down from Springfield, called the Gulf, cross there?
A. It is the Kansas City, Fort Scott & Memphis.
Q. That crosses there?
A. Yes, sir.
Q. Any other railroads cross there?
A. The Choctaw Passenger crosses there.
Q. What other place did you say you worked?
A. At Fort Madison.
Q. That is in Michigan?
A. No, sir; between Illinois and Iowa.
Q. Look at this map, Mr. Angier, and tell us how far up and down the river the Stone land runs?
A. This is the southern boundary (indicates), and this is the northern boundary (indicates).
Q. This is the western boundary (indicates)?
A. Yes, sir.
Q. How many feet of front is there on the Stone land?
A. About 3,800.
Q. About 3,800 feet?
A. Yes, sir.
Q. How much river front is there on the south of the bridge?
A. About 800 or 850 feet.
Q. How much north?
A. About 3,000 feet.
Q. If you come up here on the Hobb's land to build the bridge, you would run out into a valley?
A. Yes, sir.
Q. This along here is a valley—along back here (indicates)?
A. Yes, sir.
Q. The bluffs slopes back this way (indicates)?
A. Yes, sir.
Q. This is Houck's Missouri and Arkansas Railroad (indicates)?
A. Yes, sir.
Q. Running down this sag between the hills (indicates)?
A. Yes, sir.
Q. So if you were going to put a bridge across here, you would have to trestle here (indicates)?
A. They would swing around here (indicates).
Q. They would have to trestle to get there?
A. Yes, sir.
40 Q. After you got down off of the Stone land, what situation would they find on the south?
A. It is about the same as occurs now.
Q. Didn't you tell us awhile ago that the hills were higher here (indicates)?

A. Yes, sir; I think they are higher, because there is a creek that runs up here (indicates).

Q. Aren't they higher along here (indicates)?

A. No, sir; I think they are higher back here.

Q. You would have very heavy cutting down in here (indicates)?

A. We have heavy work where we are.

Q. I am — asking you that; I am asking you, if you would not have very heavy work cutting down here (indicates)?

A. It is pretty heavy work where we are.

Q. Do you know Mr. Lynch?

A. Yes, sir.

Q. I will ask you whether or not you ever heard him say, when he stood on that little bluff (indicates), and looked across over into Illinois, that he felt like shaking hands with himself as having found the finest bridge site in the world?

Mr. MILLER: We object to that, if the court please.

The COURT: Proceed.

Mr. MILLER: We except.

Q. Answer the question?

A. No, sir.

Q. Didn't you state to Mr. Miller that you would have just as good a bridge site above or below this present site?

A. Yes, sir; 200 feet north or south would have made but little difference.

Q. In that event the Missouri side of the bridge would still be on the Stone land?

A. Yes, sir.

Q. I believe you stated that the approach proper to that bridge is 12,000 feet?

A. Yes, sir; approximately.

Q. Tell the jury why it is that it could not have been 42,000 feet instead of 12,000 feet?

Mr. MILLER: We object to that, if the court please, because it is cross-examination of his own witness.

The COURT: What is the purpose of the question?

Mr. SMITH: I wanted to know why he fixed it at that?

The COURT: Answer the question.

Mr. MILLER: We except.

Q. Why did you come to fix it at 12,000 feet?

A. The first survey made was 13,400 feet; after I got there, I decided it was advisable to spend more money and cut grades down and make it 12,000 feet and get to the Cotton Belt quicker.

Q. Tell the jury the difference in building the approach to the bridge and building an ordinary railroad?

A. There is nothing only building a double track railroad.

Q. It is simply building a railroad to get on the bridge?

A. Yes, sir.

Q. Is it not a fact when you are out there in the country
41 building an approach to the bridge you are railroading, aren't you?

Mr. MILLER: We object to that, if the court please, because it has nothing to do with the measure of damages in this case?

The COURT: Proceed.

Q. Answer the question?

Mr. MILLER: We object to that, if the court please, because it is irrelevant, immaterial and incompetent, and has nothing to do with the damages sustained in this case.

The COURT: Objection overruled at this time.

Mr. MILLER: We except.

Q. Answer the question?

A. We are simply constructing a piece of railroad to get on to the bridge.

Q. You stated that the Cotton Belt is an interested party in this bridge?

A. Yes, sir; I said I understood that the general manager of the Cotton Belt is general director.

Q. Who is the president of this company?

A. The vice president of the Missouri Pacific.

Q. Who represents the Illinois Central?

A. The vice president.

Q. What is his name?

A. Mr. Hamilton, I believe.

Q. Who represents the Chicago and Eastern Illinois?

A. The general manager.

Q. The Frisco?

A. The vice-president and general manager.

Q. What is his name?

A. Mr. Briton.

Q. They are all stock holders, aren't they?

A. I don't know, I suppose so—I don't know whether or not. Mr. Hammond, the general manager of the Chicago and Eastern Illinois is a stock holder.

Q. You say this approach was first fixed at 13,400 feet?

A. Yes, sir.

Q. How was that point situated with reference to the Cotton Belt?

A. In order to get up to its elevation, he carried it parallel with the Cotton Belt——

Q. Then you shortened that how much?

A. I shortened it to 12,000 feet.

Q. You took off 1,400 feet?

A. Yes, sir.

Q. Of your own accord?

A. Yes, sir.

Q. Did the Secretary of War advise you to do that?

Mr. MILLER: We object to that, if the court please, because it is irrelevant, immaterial and incompetent.

The COURT: Objection overruled.

Mr. MILLER: We except.

A. He had nothing to do with that.

Q. I am not asking you that; I am asking you this—did the Secretary of War approve the approach of 12,000 feet?

A. He had nothing to do with it, and therefore he did not approve it.

42 Q. Then the approval of the Secretary of War came to the point you have stated 900 feet, 700 feet of the concrete and 200 feet of the fill as indicated by the map I have shown you?

A. Yes, sir; that was all that was submitted for his approval.

Q. That was all the approach they considered as the proper approach to the bridge, isn't it?

A. No, sir.

Q. Do you know, Mr. Angier, that the Act of Congress provides that engineers of the War Department shall approve of the approaches to the bridge?

Mr. MILLER: We object to that, if the court please, because it has been asked once before—we object to it, because it is repetition.

The COURT: Objection overruled.

Mr. MILLER: We except.

A. I read the Act of Congress and I think it provides that he shall approve of the bridge and its approaches.

Q. Now, Mr. Angier, I notice that your company only undertakes to provide a bridge and approaches for railroad tracks?

A. Yes, sir; and tracks necessary to use it.

Q. You have not paid much attention to the charter, have you?

A. I think it so states in the charter.

Q. Doesn't the charter state that the purpose of this corporation is to construct and operate a bridge over the Mississippi River at Thebes, and shall provide for the passage of railway trains, according to the Act of Congress?

A. Yes, sir; and shall provide necessary tracks to use the bridge.

Q. Notwithstanding the charter?

A. Yes, sir.

Q. When did you file this profile map exhibited by you with the County Clerk of Scott County?

A. I don't recollect the date.

Q. Do you remember about the date of testifying before his Honor here last June?

A. Yes, sir; I think so, but it has been so long since then that I haven't refreshed myself since then on it.

Q. Was it before or after this suit was begun?

A. I should say a short time after the beginning of the suit.

Q. Wasn't it filed the 10th day of May?

A. I will not be sure.

Q. That was after the suit was brought—the suit was brought the 24th of April?

A. Yes, sir; if it was filed the 10th day of May, it was after the suit was brought.

Q. That is all.

Redirect examination:

By Mr. MILLER: In other words, your people never saw any necessity of the bridge, if they could not get on to it?
A. No, sir.
Q. How far does this approach extend over the Stone land?
A. About 4,500 feet.
Q. What is the width of it?
A. 200 feet wide.
Q. That is all this time.

43 A. R. PONDER, being sworn on behalf of the exceptors, testified as follows:

Direct examination:

By Mr. SMITH: State your name to the jury?
A. A. R. Ponder.
Q. Where do you live?
A. Cape Girardeau.
Q. What is your business, Mr. Ponder?
A. Well, I have been an engineer for the last six or eight months.
Q. You mean six or eight months, don't you?
A. Yes, sir.
Q. When did you commence railroading?
A. Ten or twelve years ago.
Q. Where have you railroaded in your life?
A. In Southeast Missouri.
Q. Are you acquainted with the location of the Southern Illinois and Missouri Bridge Company's bridge.
A. Yes, sir.
Q. You know the site?
A. Yes, sir; I have been on the ground.
Q. Where does it cross the river with respect to Thebes?
A. Right at the south boundaries of Thebes—the south edge of town.
Q. Does Thebes lay immediately on the river, or back from the river?
A. Part of the town is on the bank or bottom, and part on the hill or bluff.
Q. This little town over in Illinois lies north of the bridge in that State?
A. Yes, sir; most of it.
Q. Do you know what railroads come in there on that side?
A. Yes, sir; there are three roads that come in there—the C. and E. I., which is the Chicago and Eastern Illinois; the Illinois Central and the St. Louis Valley.
Q. Who does the St. Louis Valley belong to?
A. The Missouri Pacific.
Q. Runs into St. Louis?
A. Yes, sir.
Q. I will ask you—where is the Illinois Central's terminus?

A. The northwest terminus of the main line would be Chicago, and they have a line that runs to Omaha.

Q. Does it make any connection with St. Louis?

A. Yes, sir; runs into East St. Louis.

Q. What road runs north and south parallel to the river?

A. The Mobile & Ohio.

Q. What roads does the Illinois Central connect with or cross?

A. It crosses the M. & O., and the C. E. & I., the Big Four, and the Baltimore, Ohio and Southwestern.

Q. Do you know anything about its connection with the Frisco?

A. I understand the Frisco owns the Chicago and Eastern Illinois, and, of course, it owns the St. Louis and Gulf.

44 Q. How do these roads that come in on the Illinois side reach the approach to this bridge?

A. They will reach the approach by a loop or curve, that passes around the east of the town on top of the bluff.

Q. Does the Illinois Central approach Thebes from the south or the north?

A. From the north, they have no line into Thebes now; they stop at Gale about two miles away.

Q. Is there any railroad that approaches Thebes from the south?

A. The C. & E. I.; it comes from the south.

Q. And circles around the hill, and comes on to the approach of the bridge?

A. Yes, sir.

Q. How would it affect the town of Thebes by moving that bridge further north?

Mr. MILLER: We object to that, if the court please; they certainly don't want us to pay any damages to the town, if they moved it away from there.

The COURT: Objection sustained.

Defendants objected and excepted at the time to the ruling of the court.

Q. I will ask you whether or not the river curves east just above Thebes?

A. It curves west as you go north.

Q. Curves west as you go north?

A. Yes, sir.

Q. Now, in respect to curves, I will ask you to state to the jury whether or not that bridge on the Thebes side is well located.

Mr. MILLER: We object to that, if the court please; as being incompetent and has no connection with this case.

The COURT: Objection sustained.

Defendants objected and excepted to the action of the court.

Q. How do the hills come up to the river on the Illinois side?

A. They come in about 415 feet of the river bank and run parallel to the river.

Q. Are they about the same height as on the Missouri side?

A. I don't know whether or not they are as high, but they are just about the same.

Q. Have you examined the topography of the country north of the bridge on the Missouri side?

A. Yes, sir; I have been over that ground several times.

Q. Have you examined it on the south?

A. Yes, sir.

Q. Who owns the land on the south?

A. I believe that the land on the south is owned by a man named Rose.

Q. Who owns it on the north?

A. A man by the name of Hobbs, I believe.

Q. What would you say as an engineer as to whether or not this bridge was well located?

A. I think it is about the best site along that part of the river.

Q. Tell the jury why you think it is?

A. One reason is, it is as narrow, if not the narrowest place
45 on the river for quite a distance on either side; it is not near any sharp curves in the river, and has bluffs on each side, and I think it has a good bottom—a good foundation; that is, I understand it has, and, from what I have seen since they commenced work, I am quite sure it is rock bottom.

Q. Is there any other advantage in regard to getting on to the bridge?

A. There is no place on the river that I am acquainted with that it is as easy to get to as it is on this side; it is very easy to get a line to it.

Q. What would be the difference of building the bridge on the Hobb's land, if any?

A. The difference would be the expense of getting a railroad up to the approach on the west side, because the ground is low for quite a distance back from the river.

Q. How would you get to the bridge over there?

A. Would have to build an embankment.

Q. How far back would you have to build it?

A. It would run back three or four thousand feet, I guess, before they would strike the grade line.

Q. How would the work of building that embankment compare with the work of making these cuts and fills you have heard Mr. Angier describe on the line they have adopted?

A. It would take more money to grade the approaches on the Hobb's land than it would be on this land.

Q. Would it be as good after it was done?

A. I don't know.

Q. How about keeping it in condition?

A. There is some objections to a deep cut and a deep fill—I don't think there would be much difference.

Q. Have you made any estimate as to the difference between building that embankment, if the bridge was constructed on the Hobb's land, and the construction of the approach over the Stone land?

Mr. MILLER: We object to that, if the court please, because it is foreign to any inquiry in this case.

The COURT: Objection overruled.
Mr. MILLER: We except.

A. What is the question?

Q. Have you made any estimate as to the difference between what it would cost to build this embankment you spoke of on the Hobbs land, and the construction of it on the Stone land?

A. I have looked over the ground, but I have not made any survey—I could not give a close estimate.

Q. Give us what you have?

A. I would think the difference in the cost of the earth work would be from 75,000 to 100,000 dollars.

Q. What would you say as to that being a conservative estimate?

A. I think it is low.

46 Q. Have you examined the ground south of this present location?

A. Yes, sir.

Q. Did you make any estimate between the cost of the construction of the necessary approaches to the bridge on the Rose land and the approaches on the Stone land?

A. No, sir.

Q. You never?

A. No, sir; I never figured that.

Q. I will ask you whether or not the Rose land is as feasible a location for the approaches of the bridges as the Stone land?

A. No, sir; I don't think it is.

Q. Why do you think it is not?

A. Because the ground is broken—there is quite a creek that goes into the river—a canyon—you might say a steep hollow.

Q. The difference in the cost of that location, if it was located there, and the present location would be the further back from the river you go, you would have to do more trestling and bridge work?

A. No, sir; more cuts and fills.

Q. The line of hills come up as close to the river on the Rose land as the Stone land?

A. No, sir; there is a difference of about 200 feet more than at the present location.

Q. How about the elevation of the hills back of that gulch you would have to go through compared to the hills on the river?

A. At the river there is not much difference; the further west it would throw it on higher ground.

Q. In your opinion, is that as feasible a route as the one they have selected?.

A. I don't think it is.

Q. You say you made no estimate?

A. No, sir; I never made any estimate on that location.

Q. What did you say after making the examinations you did make as to the location of the present bridge?

A. I didn't understand that question.

Q. After making the examinations you have made, what do you say as to the location of this bridge, was it a good location?

A. I think it is the best that country there affords.

Q. Is there any better anywhere that you know of on the river?

A. I don't know as to that.

Q. I will ask you whether or not this location is at the foot of the hills?

A. Practically after you get out—it is accessible to both sides of the ridge.

Q. I will show you this map—can you tell the jury what that map represents—is this the river?

A. Yes, sir; this represents the line that leads from the Cotton Belt Railroad to the bridge.

Q. This line is the bridge?

A. Yes, sir.

Q. I will ask you what would you call this kind of work, building the approach to that bridge?

Mr. MILLER: We object to that, if the court please, because it makes no difference what he calls the work; it takes this land just the same, and has nothing to do with the measure of damages.

47 Q. As an engineer, if you was asked to state what you considered the approach to that bridge proper, what would you say?

Mr. MILLER: We object to that, because it is foreign to the issue in this case.

A. I think the approach stops where the bridge stops, and that it is railroading from there on.

Q. The cuts and fills are a part of the railroad?

A. Yes, sir.

Q. Are you acquainted with the topography of the land leading back west from the approach of this bridge?

A. I have been over the land.

Q. Do you know where the Hilleman land is?

A. Yes, sir.

Q. How far is it from the line of this railroad approach?

A. Why, it is right close to it—just across the railroad right of way.

Q. The land belonging to the Bridge Company all lies south of the Cotton Belt Railroad?

A. Yes, sir; that is my understanding.

Q. Along where this railroad approach passes east and west, near the Hilleman land, is that in a sag or bottom, or along the hill side?

A. Yes, sir; the land gets on the side of the hill there.

Q. Mark out the topography of the land to the jury?

A. These marks here indicate some little streams, and this is a hill and slopes in that direction along here (indicates), and along here is a steep hill, almost a bluff—here at this place is a gully——

Q. Here is the Rose land?

A. Yes, sir.

Q. Here is the Hobbs land (indicates)?

A. Yes, sir.

Q. How far do you run west before you get on the hill side?

A. Right about here.

Q. Do you know whose land this is in here, from whom they bought it?
A. No, sir.
Q. This along here is in a sag or valley?
A. It is not very high.
Q. What road is that?
A. The St. Louis and Gulf—it used to be Houck's Missouri and Arkansas.
Q. What is the topography of the land leading out west towards the Cotton Belt?
A. It is about level until you get along about here.
Q. Is there any obstruction to prevent it from connecting with the Cotton Belt?
A. I think the grade is higher—it is up grade.
Q. As they approach the Cotton Belt they go down grade?
A. Yes, sir.
Q. About how for out from the river do they strike the same grade as the Cotton Belt?
A. About 120 stations.
Q. How many feet to a station?
A. 100 feet.
48 Q. Now, Mr. Ponder, look at this profile map and state what this crooked line represents?
A. It represents the surface of the ground.
Q. What does this straight line represent running east and west?
A. Represents the grade line of the railroad.
Q. So these elevations above that grade line represents hills?
—. Yes, sir.
Q. And the depression represents cuts and fills?
A. Yes, sir; represents places to be filled up.
Q. Represents places to be filled up?
A. Yes, sir.
Q. Whereabouts do you get near the Cotton Belt?
A. About station 25.
Q. Do you commence numbering the stations from the bridge?
A. This map numbers the other way.
Q. Numbers east?
A. Yes, sir; beginning here.
Q. What do you say the station is where they touch the Cotton Belt?
A. They have it marked Cotton Belt Railroad 25.
Q. Cotton Belt Railroad 25?
A. Yes, sir; this shows station 18 plus 93, where it curves.
Q. What I want now is to get the distance from the river to where they touch the Cotton Belt?
A. I don't know where they touch it—they have it marked here St. Louis and Southwestern Railroad.
Q. You don't know where it touches it?
A. This shows that it intercepts at station 18 plus 93—then it might run parallel to it up there (indicates).
Q. What is the station at the river?

A. Last pier 134 plus 39.

Q. That would be about 12,000 feet from the river to where it touches the Cotton Belt?

A. Yes, sir.

Q. That is all.

Cross-examination:

(By Mr. MILLER:) Mr. Ponder, you never placed any instruments there on the ground in order to make these calculations you have made?

A. No, sir; I have not on this line.

Q. Then it is simply an estimate form looking at it?

A. Yes, sir.

Q. You don't know whether or not you are in 25 or $50,000 of the difference in the cost?

A. I know it would be quite a difference.

Q. You said 75 or $100,000, didn't you?

A. I think it would be that much, if not more.

Q. You don't know how much the cost of the cuts and fills would be on the other, do you?

A. I got what I know from this profile.

Q. Is it not a fact, Mr. Ponder, that any point along that bluff is practically as good a point for the bridge as the one these gentlemen selected?

A. If you go far from there, it would not be very good.

Q. This 200 feet they have condemned is in the only place, is it?

A. No, sir; it is not the only place.

Q. Wouldn't it do for 600 feet either way?

A. 600 feet north would not make much difference.

49 Q. You told Mr. Smith awhile ago that the approach proper to the bridge is where the bridge stopped?

A. Yes, sir.

Q. If you built that bridge, you would leave it hanging in the air 75 feet, would you?

A. No, sir; it goes back to where it strikes the ground.

Q. If it strikes the crest of the hill and there is a gully or ravine 40 or 45 feet deep under it, would you consider that you had a feasible bridge?

A. How is that?

Q. If it is true that it struck the top of the hill and there was a gully there forty or fifty feet deep, would you think it was a very valuable bridge, if the approach stopped there?

A. If it was filled up, it would be a railroad, and if a bridge crossed it, it would be a bridge.

Q. If you should fill up that 700 feet from the bluff to the water's edge it would be a railroad, would it.

A. Yes, sir; I guess so.

Q. But that is an approach to the bridge, isn't it—that seven hundred and some odd feet from the water's edge to the bluff?

A. No, sir.

Q. Then the Secretary of War is mistaken, when he says it is 750 feet from the west bank to the foot of the hills, and you say if it was filled up, it would be a railroad.

A. I don't suppose he would allow them to fill it up.

Q. What it an approach?

A. It is the means of getting on to the bridge.

Q. Wouldn't they have to have an approach, if they wasn't building on the bluff, so they could get on to it?

A. It would not be any approach, if they were building on the bluff.

Q. If they have to build through those bluffs in order to get on to the bridge, wouldn't they be building an approach to the bridge?

A. It would not be an approach.

Q. This Act of Congress says that these people shall build and operate a bridge and its approaches; now, tell the jury how they can operate that bridge and its approaches without making any extension out through the hills?

A. They would have to make that so it would be a railroad.

Q. This act says that they are authorized and empowered to erect, operate and maintain a bridge and its approaches thereto over the Mississippi River; now tell the jury how they could maintain and operate this bridge by stopping at the top of that bluff?

A. It would be the end of the approach.

Q. They could not operate this bridge without extending it on, could they?

A. That does not make the approach to the bridge.

50 Q. They could not use the bridge without extending it, could they—they could not operate it without extending out through the hills, could they?

A. I don't know, but that would not be an approach to the bridge.

Q. Mr. Ponder, your experience as an engineer has been in building railroads?

A. Yes, sir.

Q. You have had no connection with a bridge across a stream like the Mississippi River?

A. No, sir.

Q. You never placed your instruments on the ground there at all?

A. No, sir; not on this line.

Q. You do know, Mr. Ponder, that the land right west of the bluff where this bridge strikes the crest of the hill is very broken—very rough?

A. Yes, sir.

Q. That profile shows it is, doesn't it?

A. Yes, sir.

Q. Shows cuts there of forty or forty-five feet?

A. Yes, sir.

Q. Fills how deep?

A. About thirty feet.

Q. And they are from 300 to 1,200 feet long?

A. I think so from that plat.
Q. They are very expensive pieces of work?
A. Yes, sir; there is about 300,000 yards of excavation.
Q. There is some waste dirt out there?
A. Yes, sir.
Q. You were familiar with this place in April, 1902, wasn't you?
A. Yes, sir.
Q. Do you know it to be a fact that, at that time, along the middle or last of April, that the St. Louis & Southwestern Railway Company was operating its road into Gray's Point?
A. Yes, sir.
Q. You also know the Chicago & Eastern Illinois was operating into Thebes?
A. Yes, sir.
Q. And that the Illinois Central was operating down to Gale?
A. Yes, sir.
Q. How far is Gale above Thebes?
A. Possibly two miles.
Q. You know at that time, that the St. Louis & Valley was in the course of construction down the river?
A. Yes, sir.
Q. And at that time, this bridge had already been located, and they were at work on the east side?
A. Yes, sir; that is my understanding.
Q. Was that before the 24th day of April of last year?
A. I don't know just when they commenced work.
Q. Everybody understood it was fixed?
A. Yes, sir.
Q. All the field work in the way of location had been done?
A. Yes, sir.
Q. Everybody in that community and in that county knew where the bridge was to be located?
A. Yes, sir; I suppose so.
Q. The property there at that time had the same advantages and was as valuable as it has been since?
A. Yes, sir; I would think so.
Q. Do you know who owned this property immediately before the 24th of April, 1902?
A. I don't know when the trade was made—I understood a man by the name of Stone owned it—Stone and his sister, Mrs. Finley—I know they sold it.
51 Q. You know they sold it in the spring of 1902?
A. Yes, sir; that is my understanding.
Q. You know they sold it after all these matters I have detailed to you was fixed?
A. Yes, sir.
Q. After these approaches were fixed—after they were located and after all the railroads were there?
A. Yes, sir.
Q. How many acres of land did the Stones own there?

A. My understanding about 300 acres.
Q. 320 acres, wasn't it?
A. Yes, sir; I believe so.
Q. Do you know for what amount they sold that 320 acre track?
A. I have been told they got $15,000.00 *dollars.*
Q. For the 320 acres?
A. Yes, sir.
Q. That is all.

Re-direct examination.

By Mr. SMITH: Have you been over the Cotton Belt to Gray's Point?
A. Yes, sir.
Q. How near the river does that run?
A. It runs down to the river at Gray's Point.
Q. Is there any approach built out to the river?
A. They have an incline.
Q. They transfer, never built any approach out to the tracks, did they?
A. They built an incline out there.
Q. Can you give any reason why the Cotton Belt didn't build its railroad on over to the bridge?

Mr. MILLER: We object to that, if the court please, because it is foreign to any issue in this case.

A. I don't know.
—. If the Southern Illinois & Missouri Bridge Company could build a railroad to the Cotton Belt Railroad, do you think they could prevent the Cotton Belt Railroad from building the same road?
A. No, sir; I don't think they could.
Q. I will ask you to state to the jury whether or not any other road runs in near to the western approach, of this bridge?
A. The St. Louis and Gulf runs near there.
Q. How near to the west end of the bridge approach?
A. I don't think it is more than 2,000 feet—may be not that far.
Q. Not more than 2,000 feet?
A. No, sir; may be not that far.
Q. Do you know whether the Bridge Company is building an approach to that railroad?
A. I don't know whether or not it is.
Q. Have you heard of them building an approach to the Gulf Railroad?
A. No, sir.
Q. Or yards?
A. No, sir; I understand the yards are the Bridge Company's yards on this side of the Cotton Belt.
52 Q. Where are the railroad yards?
A. They are on the north side of the Cotton Belt.
Q. The yards belong to the Cotton Belt?
A. Yes, sir.
Q. Do you know how much approach they have there for yards?

A. The yards are about 600 feet wide and something over a mile long.

Q. Does the Gulf come into these yards?

A. The main line of the Gulf passes just northeast of the east end of the yards—there is no track connection between the two roads.

Q. Can you give us an idea from this map?

A. This line runs along here, and this line here is about 20 feet from the Cotton Belt, and 600 feet across here is ground that I understand they have bought for yards, and I think they have this also (indicates).

Q. I want to know, Mr. Ponder, how the Gulf road is going to get down to this bridge approach, if you know of any way?

Mr. MILLER: We object to that, if the court please, because it is irrelevant, immaterial and incompetent as to how the Gulf road is going to get to this approach.

The COURT: I think it is.

Mr. SMITH: We except.

Q. Do you know whether or not it has any way to get to the bridge?

A. No, sir; not that I know of.

Q. You stated this was the Gulf line here?

A. Yes, sir.

Q. About what direction does it run?

A. In this direction.

Q. It runs around in here?

A. Yes, sir.

Q. Where is that trestle?

A. Right here—and there is one over here (indicates), and one over here.

Q. That is all.

Re-cross examination.

By Mr. MILLER: You say there is nothing to hinder the Cotton Belt from building or extending its road to the top of the bluff, where the bridge strikes the bluff?

A. There would be no physical hindrance.

Q. Did you ever think that the same parties would try to hinder the Cotton Belt from building its road to that bluff that are trying to hinder this Bridge Company from building its approaches?

A. No, sir; I don't know that I did.

Q. It would not be any more damage for the Cotton Belt to build east than it would be for the Bridge Company to build west, would it?

A. I think it would be the same.

Q. You don't think it would affect the damages any?

A. No, sir; I don't.

Q. That is all.

Redirect examination:

By Mr. SMITH: Suppose they should move the bridge six or seven hundred feet north, how would it be located, in respect to
53 the town of Thebes?

A. It would pass over it.

Q. How about it on this side?

A. It would strike about as good land on this side for its approaches as they have now.

Q. But, in that event, the people of Thebes would be living under the bridge?

—. ——.

Recross-examination:

By Mr. MILLER: You have quit engineering and gone to making brick?

A. Yes, sir.

Q. That is all.

J. E. WARNER, being sworn on behalf of the exceptors, testified as follows:

Direct examination:

By Mr. SMITH: What is your name?

A. J. E. Warner.

Q. Where do you live?

A. Benton, Missouri.

Q. What position, if any, do you hold in your county?

A. County surveyor.

Q. How long have you been surveyor?

A. Sir.

Q. How long have you been county surveyor?

A. I don't know just how long I have been surveyor. I have been deputy for over two years, up until last August, and I was appointed by the Governor as county surveyor.

Q. What experience have you had as a civil engineer?

A. This is practically all I ever done.

Q. Have you done railroad work?

A. Yes, sir.

Q. Where did you work?

A. I have done railroad work in Ohio, on the D. & X., and then on another railroad in Ohio, and on other roads.

Q. Have you had any experience in building bridges?

A. Yes, sir; in highway work.

Q. You never had any experience with railroad bridge work?

A. No, sir.

Q. You have had experience as a railroad engineer?

A. Yes, sir.

Q. Do you know where the Thebes Bridge is located?

A. Yes, sir.

Q. Tell the jury where it is located?

A. It is located in Scott County, Missouri, and in Thebes, Ill.

Q. Do you know how far south the west end of that approach is from Gray's Point?

A. No, sir; I don't know—but it is in the neighborhood of two miles, I should judge.

Q. Have you been at Gray's Point?

A. Yes, sir.

Q. Have you made any examination of the west end of this approach?

A. Yes, sir.

Q. How much examination did you give it?

A. Oh, I have been up there two or three different times—I never done any instrument work on it—only just what I could see by looking over the ground.

Q. You have been over the ground, have you?

54 A. Yes, sir.

Q. How much along the line of that approach have you been?

A. I have been along all of it, from the river to where they strike the Cotton Belt.

Q. Have you been all along it?

A. Yes, sir.

Q. Do you know about the point where the bridge strikes the hill?

A. Sir?

Q. Do you know the point where the bridge strikes the hill—do you know about where the point is that the approach to the bridge cuts into the hill?

A. Do you mean the distance from the river?

Q. Do you know where the point is?

A. Yes, sir.

Q. Is there any sign or indication there?

A. Yes, sir.

Q. What kind of a looking thing is it?

A. The work is cross-sectioned.

Q. What is the purpose of cross-sections—why do you cross-section?

A. To get the cuts or fills.

Q. Is that ordinary railroad work?

A. Yes, sir—I don't know—that is, it is pretty difficult work.

Q. It is railroad work, isn't it?

A. Yes, sir; it is railroad work.

Q. Now can you state to the jury and court, about, in your opinion, how far the approach to that bridge extends west?

A. I will say the approach extends to where it strikes the bluff.

Q. Do you know how many feet that is from the river?

A. It is in the neighborhood of 700 feet.

Q. About 700 feet?

A. Yes, sir.

Q. Why do you consider that the approach?

A. Because that is where the structure ends; it is all embankment and earth work from there out.

Q. All embankment and earth work from there out?
A. Yes, sir.
Q. What kind of earth work? Is it railroad earth work, not bridge earth work?
A. Railroad earth work; they don't build bridges out of earth.
Q. What do they build them out of?
A. Iron and castiron, and a combination of steel with it.
Q. Do you find any of this kind of work out in that direction?
A. There is a concrete arch about a quarter of a mile out from the river.
Q. Is it a culvert or bridge?
A. No, sir; it is over a public road.
Q. Have you examined this ground, Mr. Warner, for the purpose of ascertaining the feasibility of the location of this bridge?
A. Yes, sir.
Q. What would you say as an engineer as to the practicability of locating that bridge—was it well done, or not?
A. Yes, sir; I would consider it well done.
Q. Would you say as to it being the most feasible or not?
—. Yes, sir; I would say it was.
Q. Why do you say it?
A. Because of the natural bluffs on either side of the river.
55 Q. What is the topography of the ground on the Hobbs land?
A. It is low land on the Hobbs land.
Q. Do you know about where the line runs up there?
A. Yes, sir; I run the line between Hobbs' and Stone's.
Q. Suppose they located the bridge south on the Ross land, what would you say about that location compared to the present location of the bridge—is it as good, better or worse?
A. The approach itself would be a little bit longer.
Q. A little bit longer?
A. Yes, sir.
Q. What kind of earth work would they have to do in getting to the approach with their railroad as compared to the present location?
A. They would have heavier work.
Q. Materially heavier?
A. Yes, sir; materially heavier.
Q. Did you make any estimate, or could you make any estimate as to the difference in the cost of building the railroad approach to the bridge, if located on the Rose land, than where it is located?
A. No, sir; I could not do it without an actual survey.
Q. What do you say—would it be more expensive or less expensive?
A. It would be more expensive.
Q. Did you make any estimate as to the difference in the cost of the location of the bridge on the Hobbs land and its present location?
A. Yes, sir; I made a rough estimate of it.
Q. Well, what did you find the difference to be in the cost?
A. About $100,000, if they made an embankment.
Q. About $100,000, if they made an embankment?
A. Yes, sir.

Q. Suppose they made a trestle?
A. It would depend altogether on the kind of a trestle used.
Q. Suppose it was a steel structure?
A. I never considered a trestle—I considered the embankment as the cheapest they could do.
Q. You considered the embankment as the cheapest?
A. Yes, sir.
Q. I will ask you whether the building of a trestle out of timber is considered complete and good railroading, where you can build it out of dirt?
A. I would not consider it so.
Q. Is it not the rule that where a railroad builds a wooden structure, that it is to be finally completed by building a dirt embankment—that is true, isn't it?
A. Yes, sir; unless over a waterway.
Q. Do you know how the Gulf Railroad runs over here?
A. Yes, sir.
Q. On the Missouri side?
A. Yes, sir; it runs along the hill.
Q. Take hold of that, Mr. Warner—what do you know about the land lying out along the Cotton Belt along about the Hilleman track?
A. Yes, sir.
56 Q. How do you know?
A. I have been over it.
Q. Have you done any surveying out there?
A. Yes, sir; I made a survey right here (indicating) about a month ago—at the Frisco Railroad.
Q. Do you know where the railroad approach to the bridge lay?
A. Yes, sir.
Q. You have been along it, have you?
A. Yes, sir.
Q. How near does it run to the Cotton Belt Railroad for quite a little ways out there?
A. Sir?
Q. How near does it run to the Cotton Belt Railroad for quite a little ways out there?
A. From what point?
Q. From the Hilleman tract of land?
A. It joins the Cotton Belt.
Q. Does the railroad approach there run parallel with the Cotton Belt?
A. Yes, sir.
Q. Did you observe whether or not the grade line of the Cotton Belt and the railroad approach to the bridge were about the same?
A. I don't know.
Q. They would be about the same at that point, if they connected, wouldn't they?
A. I don't know what the grade line is.
Q. Do you know what land lies in this angle between the railroad approach to the bridge and the Cotton Belt Railroad?
A. No, sir.

Q. You don't know who did own it?
A. No, sir.
Q. Now, what I want to know, Mr. Warner, is this, if you can tell the difference in the grade of the Cotton Belt Railroad about the acute point of this angle, and the railroad approach to the bridge?
A. No, sir; I don't know.
Q. Do you know whether or not they are about the same grade?
A. Yes, sir; I presume so.
Q. Do they look about the same?
A. There was no grading done while I was there.
Q. How far from that point west to the end of the approach to the bridge?
A. Just about a mile.
Q. What kind of land is that, that the railroad approach runs over?
A. Tolerably level.
Q. How far apart is the railroad approach to the bridge and the Cotton Belt Railroad there?

Mr. MILLER: We object to that; if the court please.

A. Sir?
Q. How far apart is the railroad approach and the Cotton Belt there?

Mr. MILLER: We object to the physical conditions of the land out there west of the lands we are seeking to condemn, and because it has nothing to do with the damages of this property.
The COURT: Objection overruled.
Mr. MILLER: We except.

Q. Give us the distance between the Cotton Belt Line to the railroad approach to the bridge?
A. I don't know that I understand what you mean.
Q. How far is it from here to here (indicates)?
A. 310 feet is what this calls for.
57 Q. 310 feet apart?
A. Yes, sir.
Q. The right of way of the railroad approach to that bridge is 200 feet, isn't it—this green strip is 200 feet, isn't it?
A. No, sir; that is 310 feet, if you measure by the section lines.
Q. How far is it from the edge of this green strip—from the edge of this green line up to the Cotton Belt?
A. It is supposed to be fifty feet.
Q. They run parallel, side by side for a mile along nearly level road?
A. Yes, sir.
Q. That is all.

Cross-examination:

By Mr. MILLER: Look at this map again and see if you are not mistaken in your statement—now, don't you know these bridge yards has nothing to do with the approach?
A. I don't know anything about it.

Q. Then why did you say it run parallel—you don't even know where their track runs, do you?

A. No, sir.

Q. If they make the connection here at this point (indicates), it don't run parallel to it, does it?

A. No, sir.

Q. Don't it show there that they make connection?

A. Yes, sir.

Q. It shows on the plat there?

A. Yes, sir.

Q. Then, if that is true, you are mistaken about it running parallel with the track for about a mile, aren't you?

A. I don't think I made that statement.

Q. This plat, however, shows a track connection at this point here—indicate the point?

A. Yes, sir; this plat shows it to be about where the public road runs north.

Q. How far is it from there west? To the end of the yards?

A. It is about a mile.

Q. That is the mile Senator Smith tried to get you to say that it was parallel with the Cotton Belt?

A. I don't know.

Q. That is what he did get you to say?

—. ——.

Q. You never had any experience in building railroad bridges?

A. No, sir.

Q. Your experience in railroad work was on the Houck's Missouri and Arkansas Railroad from Morehouse south?

A. Yes, sir.

Q. Where there is neither cuts nor fills?

A. There are a few fills.

Q. There was no cuts at all?

A. No, sir.

Q. And very few ties?

A. No, sir; it was pretty well tied—it was well tied most all the way.

Q. You never done any surveying over there about this bridge approach, did you?

A. No, sir; not in regard to the approach.

Q. You know the point where the western approach, as you call it, strikes the crest of the hill?

58 A. Yes, sir.

Q. If it stopped there, it would not be very valuable, would it?

A. Yes, sir.

Q. What would you do to it?

A. Build a railroad to it.

Q. Suppose they build the approach to the railroad?

A. I would not have money enough to do that.

Q. Suppose they had done trestling across the first cut in place of a fill, what would you call it then?

A. The trestle of a railroad.
Q. Then according to your theory it does not matter whether or not you trestle or fill, it does not make it an approach?
A. No, sir.
Q. There is a culvert we built over the road down there (indicates)?
A. Yes, sir.
Q. How did they get to that culvert—did they build a bridge to the culvert?
A. They haven't done any work there.
Q. How are they going to get to it?
A. Fill to it.
Q. Would it be a railroad or an approach to the bridge?
A. It would be a railroad.
Q. Suppose they used part of the embankment for a wagon road what would it be?
A. It would be a public road.
Q. There would be no approach to it?
A. No, sir.
Q. How would you go about getting to that bridge without an approach?
A. It would depend upon the situation.
Q. From the bridge proper to where it strikes the crest of this hill, it is about sixty-five feet in the air?
A. Yes, sir.
Q. Isn't that the bridge?
A. It is part of the bridge, but you haven't complied with your act.
Q. Why, isn't it a bridge from bluff to bluff?
A. No, sir; a bridge crosses the stream.
Q. Does it stop at the water's edge, or does it go on?
A. It can stop and take a viaduct.
Q. Which is the same thing as an approach?
A. Yes, sir.
Q. That is all.

LOUIS HOUCK, being sworn on behalf of the exceptors, testified as follows:

Direct examination:

By Mr. SMITH: State your name to the jury?
A. I presume they all know me.
Q. You live at Cape Girardeau, do you, Mr. Houck?
A. Yes, sir.
Q. What is your business?
A. I am railroading and farming—running farms.
Q. What else?
A. That is all.
Q. Are you engaged actually in the railroad business? At this time?

59 A. I am constructing a road, and operating one road—the Chester and Perryville Road—I am constructing a line between Cape Girardeau and Perryville.

Q. How long have you been in the railroad business?

A. Since the first of August, 1880—About twenty-three years.

Q. Tell the jury about your railroad building?

A. I have built in the neighborhood of 400 miles of road in Southeast Missouri, generelly with limited means and the money I could borrow from my friends.

Q. Did you do any railroad work where it was all cuts and fills and tunnels?

A. Yes, sir.

Q. What roads?

A. I built one tunnel 800 feet long and have built a great many miles of railroad in very hilly and tough country much to my regret, and I have built railroads in a good country much to my satisfaction.

Q. Mr. Houck, are you acquainted with the site of the Thebes Bridge?

A. Yes, sir; I am.

Q. Where is it located?

A. It is located in Alexander County, Illinois, and Scott County, Missouri—between Thebes on the east to Manning's Landing on the west side.

Q. Do you know how far it is from pier number six on the west side of the river to the point where the stringers of the bridge strike the hill?

A. It is approximately 700 feet, I should judge, from the ground; pier number six is out in the river some perhaps, sixty-five feet; I guess from observation of the distance from the bank of the river to where the bridge would strike land is about 600 feet—I haven't made an actual measurement—that is my recollection about it—about the two distances.

Q. Do you know the ground that the road takes from that point—I mean from where the bridge strikes the hill?

A. Yes, sir.

Q. What kind of land is it?

A. It is very broken, hilly land—in a general way, I should think—I have not made any calculation of the cuts and fills, but I should think the cuts and fills would pretty near balance work—although there may be, perhaps, more dirt—a little more dirt than they might need to fill up.

Q. In other words you might have some waste dirt?

A. There might be some—I would not like to be positive about that; I can only make the statement in the general way, that the cuts and fills may approximately balance each other; it is what we might call in railroading where the cuts and fills balance each other—it is a comparatively profitable construction—it is not so heavy as if it was all fills, or all cuts.

Q. Did you observe from any recent examination you have made, if there was any sign indicating where the bridge cuts into the hill?

A. Yes, sir; I went down there in order to assure myself about the

matter last Sunday—it was the Lord's Day but I had no
60 other time.

Q. From that point west, I will ask you to state from your experience as a railroad builder what kind of work you would call that, railroading or bridge building?

A. I would call it railroading—I did not see any bridge there at all—it is all earth work.

Q. What would you call the approach of that bridge?

A. Well it is bridge work—even a railroad has its bridge work—only it is very seldom you will find anybody that would put up an embankment sixty or seventy feet high; they would put up a trestle or a pile bridge—in fact, I know of no place where there is an embankment sixty or seventy feet high; except up there in Club's Hollow.

Mr. MILLER: I object to him making comparisions.

Q. Where does the approach to the bridge end?

A. In my judgment it ends where it strikes the ground.

Q. What would you call the remainder of that?

A. I would call it a railroad.

—. Tell the jury about how many tracks might be located on a strip of land 200 feet wide—the number of tracks that might be located?

A. Ten tracks.

Q. Ten tracks that might be located?

A. Yes, sir.

Q. Why do you say ten?

A. Because I allow twenty feet to a track.

Q. Suppose you allowed for cuts, how many tracks could you locate on that 200 feet, allowing eighteen and one-half inches to the foot?

A. You could not locate more than five tracks, if you allow that much.

Q. Is that too much, or not?

A. I never made my slopes one and one-half, because the more slope the more wash; I find that the more perpendicular you can keep your slopes, the less wash; the less exposure, the better you are protected.

Q. Then by them being more perpendicular, that would give you more room for tracks?

A. Yes, sir.

Q. I will ask whether or not a part of this "200 foot strip" does not pass over practically level ground?

A. Well, I could not tell now—I have not got the profile before me; I don't know what the profile shows—the profile will tell.

Q. Look at the profile and state?

A. I cannot tell from this profile; I don't know anything about this scale; if it is an ordinary railroad scale, no part of it passes over level ground, that all of it would have to be excavated—I suppose it is an ordinary scale.

Q. Now, Mr. Houck, have you made an estimate as to what this

property would be worth for a bridge approach—I mean that part fixed by the Secretary of War—that 700 feet?

A. Well, I don't know that I thought much about that particular 700 feet; it is 700 feet long and 200 feet wide.

Q. Yes, sir?

61 A. It would be about three acres—do that take from the bank of the river and embrace the terminal rights between pier six and the shore—you want the terminal rights also there?

Q. Yes, sir?

A. Well, there is a hundred-foot strip out of that, that belongs to the Gulf Railroad now; that would be an acre to come out there, and that does not belong to these land owners; that would be 200 feet by 600 feet; that would be a little less than three acres; 210 feet square make an acre.

Q. My question is whether or not you have made any estimate as to the value of the property there, taking that 200 feet by 700 feet, for a bridge site.

A. Taking into consideration that it is a railroad bridge over which the Cotton Belt Railroad, the Illinois Central, the Frisco and the Chicago and Eastern Railroads cross. Now, Judge, what is in my mind is this: the bridge is located there by Act of Congress in 1900, we will say, and the engineers located that bridge, and the railroads are all there, and, after all this is an accomplished fact, I am asked what that 700 feet by 200 feet is worth as a bridge approach—is that right?

By COURT: Yes, sir; and as a bridge site—can you give an estimate?

A. Of course, there are a great many things that enter into a question of that kind, and I want to answer it the way it ought to be answered, and satisfactory to myself anyway. The railroads are there.

Mr. MILLER: We object to the oratory and argument of the witness in this case.

The COURT: He is giving his reasons now.

A. The railroads are there—three railroads on east side and two railroads on the west side, and the Act of Congress has been passed establishing the bridge at that point, and that bridge is located as the Act of Congress provides, as I understand; now, in determining what the value of that bridge site is, Judge, I have to take that into consideration, that all the things are there, and also the other fact, that that bridge site at that particular point, the river has a rock foundation; that the rock foundation extends from shore to shore. I have seen the rock on the Illinois side, and I seen the rock on this side, but I don't know what is exactly in the center of the river from my eye; but from my eye I know that the river below is wider, and I know that at that particular point the space between the river and the hills is narrower; altogether I consider that one of the best sites for constructing a bridge on the Mississippi River; now, in giving you the value of that, I would have to take into consideration what the people who would put it there would make or save in using this property so particularly situated.

Mr. MILLER: We object to that, if the court please, as not
62 an element.

The COURT: Proceed.

A. Well, in my judgment, gentlemen, I think that bridge site there is worth all the way from $75,000 to $100,000—that is my judgment.

Q. Mr. Houck, you may state what in your opinion, a 200 foot strip—the other portion of the 200 foot strip on the Stone land is worth for a terminal railroad and for terminal purposes?

A. Well, the Cotton Belt Railroad is approximately one and one-half miles from there, or one and three-quarters of a mile; attached to every bridge there must be terminal yards where cars are switched and where cars are handled for the railroads that expect to do business with that bridge; the bridge is one thing and the terminal yards is another thing; I can only get at the value of a piece of property by what can be made out of that piece of property——

Q. State now—well, go ahead?

A. Now, a terminal yard don't work for its health; the cars that are handled in a terminal yard are handled for money——

Mr. MILLER: We object to arguing the case at this time—let him answer the question.

The COURT: Yes, sir

A. In my judgment that property is worth all the way from $500,000 to $750,000 in money.

Q. Why?

A. Because it can be made to yield in the hands of a terminal railroad from $50,000 to $75,000 a year profit to the Terminal Company in this way, for there is now in the neighborhood of——

Mr. MILLER: We object to that, if the court please, as to the possibilities of the yield of this terminal railroad.

The COURT: My opinion is that the other side can cross-examine as to the reasons for his opinion.

Q. That is all, Mr. Houck.

Cross-examination:

By Mr. MILLER: Mr. Houck, you have raised about $500,000 on the value of this property since you testified over at Benton, haven't you?

A. No, sir.

Q. Didn't you value it there at $250,000?

A. No, sir; you have my testimony.

Q. You have known all this time that this property had this great value, didn't you?

A. How is that?

Q. You have known that this property had this great value for quite a while, haven't you?

A. Yes, sir.

Q. You are a man that has been looking out for a good thing in this country, haven't you?

A. I have been looking out for myself in all of my transactions

like you are in your transactions, and like any other gentleman who is sane, will look out for himself in all business that he has entered into.

Q. How is it that you never bought this property a few
63 years ago, when you could have bought it for a song?

A. I didn't want it then.

Q. Didn't you want it in April, 1902?

A. No, sir.

Q. Do you mean to tell the jury that there was $75,000 a year profit in that business, and then you did not want it?

A. Yes, sir; but I told my nephew and Mr. Crowder that it was a good big thing—that there was a good big thing in it, and told them to buy it—I knew it when this Act was passed—I knew this property was of immense value.

Q. You know that Act provides that it could have been constructed any place for three miles up and down the river?

A. Yes, sir.

Q. Then, this property had no value until it was located?

A. No, sir; not until it was fixed there.

Q. Then the value of this property was fixed by the location of the bridge?

A. No, sir; by the Act of Congress.

Q. Suppose they had fixed it three miles away from where it is now, would it have had this value?

A. No, sir; it would not have had any value for terminal purposes.

Q. Is it not a fact that any value it has occurs out of the fact that this Bridge Company has to have it?

A. No, sir; not altogether.

Q. Then, how does it occur?

A. It occurs out of the fact that the five railroads are there and use it for terminal purposes.

Q. Then, its value was fixed by the location of the bridge, wasn't it?

A. Yes, sir; I will say it was.

Q. Then, you place your values there upon the necessities of the Bridge Company?

A. No, sir.

Q. If they did not need it, what would they do with it?

A. The bridge don't need it.

Q. Well, who does need it?

A. It is the Terminal Railroad, that is expecting to put up a railroad—and the west terminal of the bridge stops where it strikes *terra firma,* and there is no approach from there—it is a railroad from that point on—of course, the terminal railroad is in there and that is another thing, when a terminal railroad is in there.

Q. The terminal railroad that is being put in there, the Bridge Company is building it, isn't it?

A. Yes, sir.

Q. Then, for what is this property valuable?

A. It is valuable for a terminal railroad.

Q. Then, it is not worth anything, if that railroad isn't there, is it?

A. It is valuable for a terminal railroad—I told you that the approach up to the railroad was worth $75,000, because it was located where it was, and then I said the terminal yards embracing a strip 200 feet wide and 4,000 feet long was worth $750,000.

64 Q. You said in your testimony at Benton that it was worth $250,000 and now you said it was worth $750,000—which is correct?

A. You have my testimony that I gave there, and you have heard what I said here, that a terminal yard could be made to yield from $50,000 to $75,000, a year, and if that is not proof that it is worth $750,000, then I don't know what is proof.

Q. How does that prove it—can you explain that?

A. Yes, sir; I can demonstrate that to anybody; property that will yield $75,000 a year profit is well worth $750,000; in order to realize $75,000 a year an investment at 10 per cent., you would have to invest $750,000, in other words, you would have to loan $750,000 at 10 per cent. to get $75,000 a year income—I think property that will yield $75,000 a year profit is worth $750,000.

Q. I will ask you, if it is not a fact, that every dollar of value that this property has, occurs out of the fact that the Bridge Company or the Terminal Company has to have it, and if the railroad and bridge wasn't there, it would not be worth anything only for farm land—what was it used for before?

A. It was used for farm land, until this great development was made down there.

Q. You never knew farm land down in that country to sell for more than fifty or sixty dollars an acre, did you?

A. No, sir.

Q. Does not every piece of property that gets in the way of a railroad become fabulously valuable?

A. No, sir.

Q. Then, why does such property as that have such a fabulous value as it has?

A. Because it is in a peculiar position—it is peculiarly situated, and a peculiar condition surrounding it; if this was placed so you could put it on one side or the other, it would not be so peculiarly situated.

Q. Could not this be put on one side or the other?

A. No, sir.

Q. Suppose a railroad was built 120 miles and gets to a little gully that you owned, would you consider it worth $1,000,000?

A. Yes, sir; if it was so peculiarly situated.

Q. Is it not a fact that the value is not in the property, but it is in the ability you have to bleed a corporation?

A. No, sir; don't talk about bleeding a corporation—there is no use in talking about that— I am giving you what I think is a fact, and if you don't like it I can't help it—I have no desire to bleed a corporation—I have told you under oath what I think about it, and I will tell you under oath here, that I am willing to pay

$200,000 for the terminal rights myself—I have no disposition to bleed a corporation.

Q. Will you answer me the question I asked you—is it not a fact that the value of this property depends upon the ability of the party or parties owning it to extort money from the corporation, and that is not its intrinsic value?

65

A. I think it is intrinsically worth that now.

Q. Do you know of any other concern that wanted this property?

A. No, sir, because the Act of Congress never authorized but one bridge to be located there.

Q. Then that bridge had three miles' scope up and down the river, in which to locate?

A. I don't think so—I suppose the act says that it can be located within three miles, but it also—the usual rule is that it has to have three miles of clear river way whereever the bridge is located so the steamboat pilots are protected.

Q. There was no market value for that property beside for farm land, was there?

A. No, sir, none—but that does not prove that it has no other values.

Q. It had no other market value—there was nobody trying to buy it, except the bridge people, were there?

A. That would not prove that it had no value.

Q. I am not asking you that, I am asking whether or not it had any other market value than for farm land—was anybody trying to buy it except the bridge people?

A. If a man wanted to buy it for farming and it had no other value; then it would be worth forty or fifty dollars an acre for farming purposes as a whole, but I don't suppose a man would want a 200 foot strip taken from the middle of his land—I have paid, perhaps, forty or fifty dollars an acre for land myself.

Q. Now, Mr. Houck, you say that when it strikes the crest of the hill that it ceases to be an approach from there on?

A. Yes, sir.

Q. Now, this Act of Congress provides that this corporation may build, erect, maintain and operate a bridge and its approaches across the Mississippi River at some point within three miles of the point where it is located, now, I will ask you how they could operate that bridge without the use of the 200-foot strip from the hill west—as I understand you to say that where there is a railroad bridge, there must be a railroad running out in the country, is that it?

A. Yes, sir, there must be a way to get to it.

Q. How far would that railroad run?

A. Far enough to get business.

Q. Then it might run to Texas or Delaware?

A. I claim the approach stops when it strikes the ground, and when it strikes the land, it becomes a railroad, and if you go to the question as to how far it goes out, it might go one mile, two miles, or to Delta, Malden or anywhere else——

Mr. CRAMER: Do you swear that, Mr. Houck?

A. I say this, Mr. Cramer, if the bridge has a right to extend its approach out here two miles to the Cotton Belt Railroad
66 and still remain an approach, in order to get business, then it might extend to Delta, Malden or anywhere else. If it can go out there two miles to the Cotton Belt and still remain an approach to the bridge, in order to get business; then I say it might extend to Delta, Malden or anywhere else—I am swearing that, Mr. Cramer.

(By Mr. CRAMER:)

Q. You are swearing that, are you?
A. Yes, sir.

(By Mr. MILLER:)

Q. You think that the approach stops when it strikes the land?
A. Yes, sir, I believe I said that the approach stops there in my judgment—when it strikes the hill, it is not an approach after that——
Q. What is an approach, then—an approach is the means of getting on the bridge, isn't it?
A. Yes, sir, the approach is the means of getting from the bridge on to the land.
Q. If it struck a bluff sixty feet in the air, it would not be a very valuable bridge, would it?
A. I don't suppose anybody would be fool enough to stop there.
Q. Do you know Mr. R. G. Stone?
A. I don't know—I may have seen him once.
Q. Do you know Mrs. Finley?
A. I don't believe I ever met the lady.
Q. What relation is Mr. Giboney Houck to you?
A. He is my son.
Q. What relation is L. B. Houck to you?
A. He is my nephew.
Q. They are the gentlemen together with Mr. Crowder, who bought this property in April, 1902?
A. Yes, sir.
Q. And paid $15,000 for 320 acres, of which this 20 acres is a part?
A. Yes, sir, I think so.
Q. Didn't they employ you to write the deed for them?
A. I did that as a friendly act—I told them because I had an interest in them—I told them this was a fine thing and a good thing for them.
Q. You wrote the deed, because you could write better than the balance?
A. I write about as good a hand as you do, Mr. Miller—now, Mr. Cramer, I am not saying that under oath, for I believe Miller can beat me.
Q. That is all.

The COURT: Stand aside, Mr. Houck. Who is next?
Mr. SMITH: If the Court please, we offer the certificate of the

Secretary of the War with drawings attached showing a section of the bridge on the Mississippi River and the western approach thereto——

Mr. MILLER: We object to that, if the court please, as irrelevant, immaterial and incompetent——

Mr. SMITH: There is a certificate attached, as to the genuineness of the drawings.

Mr. MILLER: We object to that as irrelevant, immaterial and incompetent, and does not tend to prove any issue in this case.

The COURT: What purpose are you offering it for?

Mr. SMITH: We offer it for the purpose of showing that
67 the Secretary of War under the Act of Congress which authorized the construction of this bridge by the Southern Illinois and Missouri Bridge Company, has approved plans submitted by the Bridge Company for the building of the bridge and approaches thereto, and most particularly the western approach thereto, and for the further purpose of showing that as a matter of law the approach to the bridge, as a part of the bridge, has been settled by the law officers designated by the Act of Congress, and for the further purpose of showing that the order made by the judge of the Circuit Court of Dunklin County on the 23rd day of March, 1903, appointing commissioners to view and assess damages on a certain strip of land described in the petition, is invalid.

Mr. MILLER: We object as irrelevant, immaterial and incompetent, and does not tend to prove any issue in this case; the Supreme Court has decided we had a right to condemn this land for the purpose of approaches, roadways, terminals, etc.—that is the language of the opinion.

The COURT: Objection overruled.

Mr. MILLER: We except.

The drawing and certificate are as follows:

P. 89*a*. Certificate of Secretary of War.

P. 89*b*. Certificate of (Sanger).

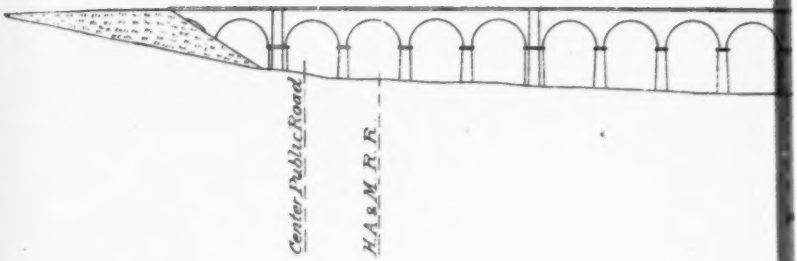
Drawing ——.

68 UNITED STATES [Vignette] OF AMERICA.

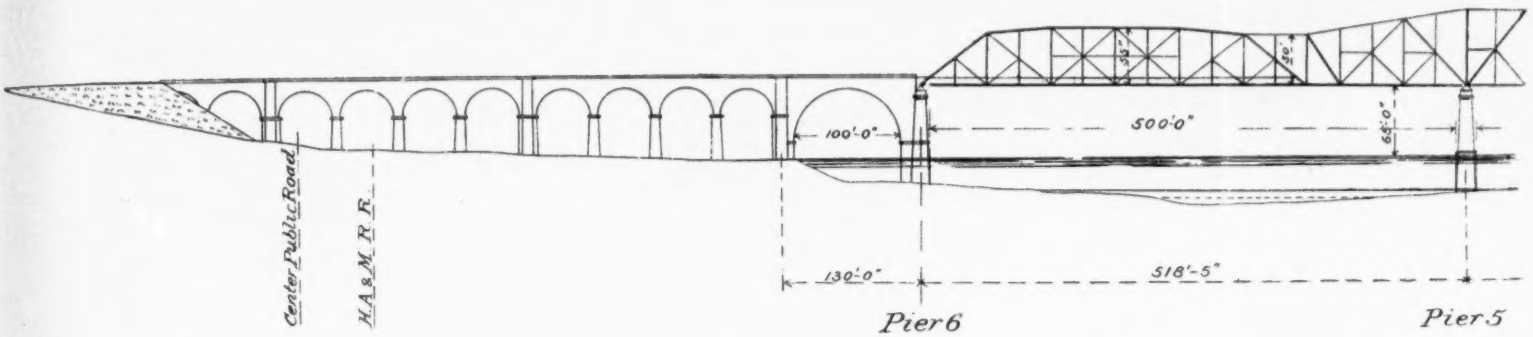
WAR DEPARTMENT,
WASHINGTON, *April* 23, 1903.

I hereby certify that the attached writing is a copy of the instrument executed by the Secretary of War January 16, 1902, approving the plan and location of the bridge proposed to be built across the Mississippi River, at or near Grays Point, Mo., by the Southern Illinois and Missouri Bridge Company; that the attached tracing is a copy of that part of the plan, approved as aforesaid, showing piers 5 and 6 and the western approach of the proposed bridge; and that the same are true and correct copies of the originals on file in the office of the Chief of Engineers, U. S. Army.

G. L. GILLESPIE,
Brig. Gen., Chief of Engineers, U. S. Army.



No. 253
Stone arch. } p. 70
Bridge Co.



SOUTHERN ILLINOIS
AND
MISSOURI BRIDGE CO.

ELEVATION OF
MODIFIED DESIGN Nº2 OF
PROPOSED BRIDGE
NEAR
THEBES ILL.

Scale 1 in. = 100 ft.

0 50 100 200 300 400 500 Ft.

Chicago January 10th 1902.

No. 253
Stone ind. } p. 70
Bridge Co.

Be it known that G. L. Gillespie, who signed the foregoing certificate, is the Chief of Engineers of the United States Army, and that to his attestation as such full faith and credit are and ought to be given.

In witness whereof I have hereunto set my hand, and caused the seal of the War Department to be affixed, on this twenty-fourth day of April one thousand nine hundred and three.

[Seal United States of America, War Office.]

ELIHU ROOT,
Secretary of War.

69 Whereas, By an act of Congress, approved January 26, 1901, entitled "An Act to authorize the construction of a bridge across the Mississippi River at or near Gray's Point, Missouri," the Southern Illinois and Missouri Bridge Company, a corporation existing under the laws of the State of Illinois, was authorized to construct a bridge over the Mississippi River at or near Gray's Point, Missouri, upon obtaining the approval by the Secretary of War of such design and drawings and map of location of the said bridge as shall comply with the requirements of the said act;

And whereas, Said Southern Illinois and Missouri Bridge Company, has submitted to the Secretary of War, for his examination and approval, a design and drawings and a map of the location of a proposed bridge over said river at said place, which comply with the requirements of said act;

Now therefore, This is to certify that the said design and drawings and map of location, which are hereto attached, are hereby approved by the Secretary of War, subject to the following condition:

That the Engineer Officer of the United States Army, in charge of the district within which the bridge is to be built, may supervise its construction, in order that said plans shall be complied with.

Witness my hand this Sixteenth day of January, 1902.

[SEAL.]

WM. CARY SANGER,
Ass't Secretary of War.

(Here follows drawing marked page 70.)

71 Mr. SMITH: If the court please, we offer a certified copy of a deed of trust made by the Southern Illinois and Missouri Bridge Company to secure a—first mortgage of $3,000,000—it being a mortgage of all the property of the Southern Illinois and Missouri Bridge Company of every kind and description—this is offered to show the extent and magnitude of the enterprise—we take it that it tends to show the value of the site.

Mr. MILLER: We object to the offering, if the court please, because it is irrelevant, immaterial and incompetent, and tends to prove no issue in this case.

The COURT: Objection sustained. Defendants objected and excepted at the time to the ruling of the court.

Mr. SMITH: Come around, Mr. Aniger.

W. E. ANGIER, being recalled on behalf of the exceptors, testified as follows:

Direct examination.

By Mr. SMITH:

Q. You stated yesterday that you were the resident engineer?

A. Yes, sir.

Q. As resident engineer, will you tell the jury your duties?

The COURT: Speak a little louder.

Q. As resident engineer in the construction of this bridge, tell the jury your work.

A. I have the construction work—I see that it is constructed according to the plans.

Q. You know the material that enters into the construction of that bridge?

A. Yes, sir.

Q. I will ask you whether or not you can fix the cost?

A. Only approximately.

Q. Including the approaches fixed by the Secretary of War?

A. Only approximately——

Mr. MILLER: We object to that, if the court please, as wholly incompetent in this case, and is no issue.

The COURT: Proceed.

Mr. MILLER: We except.

Q. Answer the question?

A. The estimated cost of the bridge, including what is called the approaches and our work, altogether is $2,600,000.

Q. That is all.

The COURT: Stand aside. Who is next?

Mr. SMITH: If the court please, since we have shown the estimated cost of the bridge by the resident engineer, I now offer the deed of trust for the purpose of showing the value of the site.

Mr. MILLER: We object, if the Court please, because it does not tend to prove any issue in this case, and is irrelevant, immaterial and incompetent.

The COURT: Objection overruled.

Mr. MILLER: We except.

72 *Deed of Trust.*

This Indenture, made this 1st day of November, in the year of our Lord one thousand nine hundred and one, between the Southern Illinois and Missouri Bridge Company (hereinafter for brevity designated as the "Bridge Company"), a corporation organized and existing under the laws of the State of Illinois, party of the first part, and the Mercantile Trust Company, a corporation organized and existing under the laws of the State of New York, and Robert R. Hutchinson, a citizen and resident of the City of St. Louis, State of Missouri (hereinafter for brevity designated as the "Trustee"), parties of the second part.

Whereas, The said Bridge Company is organized under the laws of the State of Illinois for the purpose of erecting, constructing, maintaining and operating a bridge and approaches thereto, over the Mississippi River, from a point on the east bank of the Mississippi River, in the County of Alexander, in the State of Illinois, opposite, or nearly opposite, to Gray's Point, in Scott County, in the State of Missouri, or from some other convenient point on said river in said Alexander County, Illinois, to some opposite point on said river in the State of Missouri, wherein a distance of three miles above or below said Gray's Point; said bridge to be constructed for passage of railway trains, and, at the option of said Bridge Company, to provide also for the passage of vehicles, foot passengers, etc.; and the power and authority to do all things as aforesaid is granted by an Act of Congress of the United States, approved January 25, 1901; and

Whereas, The said Bridge Company is about to issue for the purpose of raising the money necessary for the construction of such bridge and its approaches and appurtenances, for the purchase of lands and property necessary for said bridge, its approaches and appurtenances, for making all needful and proper repairs, renewals and replacements, alterations, additions, betterments and improvements thereto, for purchasing such rolling stock and floating equipment as the Bridge Company may deem necessary in connection with the maintenance and operation of said bridge property, and for the payment of interest on the cost of such construction, maintenance and purchases until the completion of said bridge and approaches, three thousand (3,000) first mortgage bonds for the sum of one thousand dollars (1,000) each, all of which bonds, notwithstanding the same may be issued at different times, are equally secured by these presents, and are to be authenticated by a certificate signed by the said The Mercantile Trust Company, one of the trustees hereunder, and to be substantially in the following form:

SOUTHERN ILLINOIS AND MISSOURI BRIDGE COMPANY.

First Mortgage Gold Bond.

No. —. $1,000.

The Southern Illinois and Missouri Bridge Company, a corporation organized and existing under the laws of the State of Illinois, for

value received, hereby promises to pay to the bearer, unless this bond is registered, then to the registered holder thereof, on the 1st day of November, 1951, at its office or agency in the City of New York, one thousand dollars ($1,000) gold coin of the United States of the present standard of weight and fineness, and to pay interest thereon at the rate of four (4) per cent. per annum, from November
73 1, 1901, payable semi-annually, at said office or agency, in like gold coin, on the first days of May and November in each year until the payment of said principal sum, upon the surrender and cancellation of the respective coupons for such interest hereto annexed, as they severally shall mature. Both the principal and interest of this bond are payable without deduction for any tax or taxes which the said Bridge Company may be required to pay or to retain therefrom under or by reason of any present or future law of the United States, or of any state, county or municipality therein. This bond is one of a series of bonds of said Bridge Company of like tenor and date, issued and to be issued to any amount not exceeding in the aggregate of the principal sum of three million dollars ($3,000,000), at any one time outstanding; all of which bonds are issued under and in pursuance of, and are equally secured by, an indenture dated November 1, 1901, executed by said Bridge Company to The Mercantile Trust Company, a corporation of the State of New York, and Robert R. Hutchinson of St. Louis, Missouri, as trustee, covering the entire bridge and property of the said Bridge Company, together with all approaches and appurtenances, franchises (including the franchise to be a corporation), privileges and immunities of the said Bridge Company, now owned or hereafter acquired by it.

Upon default in the payment of interest on this bond for six months after it becomes payable, the Trustees may declare the principal of all the bonds immediately payable, and must do so if required by the holders of a majority of all such bonds.

This bond shall pass by delivery unless registered upon the books of the Bridge Company at its agency in the City of New York. After registration of ownership certified hereon by the transfer agent of the Bridge Company no further transfer, except upon the books of the Bridge Company, shall be valid, unless transferred to bearer on said books, after which this bond shall pass by delivery as at first, but shall continue subject to registration and transfer to bearer successively at the option of each holder. Such registration, however, shall not affect the negotiability of the coupons, but the same shall continue to be transferable by delivery, notwithstanding registration of the bond.

This bond shall be valid only when authenticated by the certificate endorsed thereon, executed by the Mercantile Trust Company, one of the trustees of said indenture, or by its successor as trustee thereunder.

In Witness Whereof, Said Southern Illinois and Missouri Bridge Company has caused these presents to be signed by its President, or its Vice President and its corporate seal, attested by its Secretary or Assistant Secretary, to be hereto affixed, as of the 1st day of Novem-

ber A. D. 1901, and the annexed coupons to be executed with the engraved signature of its Treasurer.

(Signed) SOUTHERN ILLINOIS AND MISSOURI BRIDGE COMPANY,
By —— ——, *President.*

Attest:
—— ——, *Secretary.*

74 (*Form for Interest Coupons.*)

No. —. $20.00

On the — day of ——, the Southern Illinois and Missouri Bridge Company will pay to the bearer, at its office or financial agency in the City of New York, twenty dollars ($20) United States gold coin, without deduction for taxes, being six months' interest then due on its first mortgage gold bond, No. —.

—— ——, *Treasurer.*

(*Trustees' Certificate.*)

This bond is one of a series of first mortgage gold bonds described in the within mentioned mortgage or deed of trust, executed by the Southern Illinois and Missouri Bridge Company to the undersigned as trustee, with Robert R. Hutchinson.

THE MERCANTILE TRUST COMPANY, *Trustee,*
By —— ——, *President.*

And, Whereas, At a meeting of the Board of Directors of the Bridge Company, duly held on the 24th day of September, in the year A. D. 1901, a draft of mortgage or deed of trust substantially in the form of this indenture was submitted, and the execution and delivery thereof, and the issue, as therein provided, of the series of bonds thereby secured, were duly authorized and approved; and

Whereas, At a meeting of the Stockholders of the Bridge Company, held on the 24th day of September, 1901, the issue of the bonds hereby secured, and the execution and delivery of this indenture in the form hereof, were by vote of said stockholders as required by law, duly authorized and approved;

Now, Therefore, This Indenture Witnesseth: That the said Bridge Company, in order to secure the payment of the principal and interest of all of said bonds at any time issued and outstanding under this indenture, according to their tenor and effect, and the performance of all the covenants and conditions herein contained, and in consideration of the premises and of the purchase and acceptance of such bonds by the holders thereof, and of the sum of one dollar to it paid by the trustees at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has executed and delivered these presents and has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over, and by these presents does grant, bargain, sell, alien, remise, re-

lease, convey, confirm, assign, transfer and set over unto the said trustees, and to their successors or assigns forever, all and singular the bridge of the said Bridge Company, as the same may now or hereafter be constructed across the Mississippi River as aforesaid, including the approaches to such bridge upon either side of said river, together with all the real estate, lands, tenements and appurtenances thereto, and all locomotives, cars, boats, and other rolling stock and floating equipment, and all other property now belonging to, or hereafter to be acquired by, the Bridge Company, and all and singular the rights, privileges, immunities and franchises of the said Bridge Company, now held or hereafter to be acquired (including the franchise to be a corporation), and all the tolls, fares, freights, rents, income, issues and profits thereof, and all the reversion and revisions, remainder and remainders, in trust, however, for the uses and purposes hereinafter mentioned.

To have and to Hold. All and singular, the said property, premises, things, appurtenances, rights, privileges, immunities and
75 franchises hereby conveyed, intended to be conveyed, unto said trustees, as joint tenants and not as tenants in common, and to their successors and assigns forever.

But in truth nevertheless, for the equal and proportionate benefit and security of the holders of the bonds and coupons issued or to be issued under and secured by this indenture, and for the enforcement of the payment of said bonds and interest thereon when payable, according to their tenor, purport and effect, and to secure the performance and observation of and compliance with the covenants and conditions of this indenture, without preference, priority or distinction as to lien or otherwise, of one bond over any other bond by reason of priority in the time of issue, sale or negotiation thereof, or by reason of the purpose of such issue, so that each and every bond issued or to be issued hereunder shall have the same right, lien and privilege under and by virtue of this indenture, and so that the interest and principal of each and every such bond shall, subject to the terms hereof, be equally and proportionately secured hereby, as if all had been executed, delivered and negotiated simultaneously with the execution and delivery of this indenture, it being intended that the lien and security of this indenture shall take effect from the day and date thereof, without regard to the date of the actual issue, sale and disposition of said bonds, as though upon the day of such date all of said bonds had been actually issued, sold and delivered to, and were in the hands of, innocent holders thereof, for value.

And it is hereby covenanted and declared that all said bonds, with the coupons for interest thereon, are to be issued, certified and delivered, and all the mortgaged property is to be held by the trustee, subject to the further covenants, conditions, uses and trusts hereinafter set forth; and it is hereby covenanted and agreed between the parties hereto as follows, namely:

Only such bonds as shall bear thereon endorsed a certificate substantially in the form hereinbefore recited, executed by the Mercantile Trust Company or its successor, one of the trustees hereunder, shall be secured by this indenture or entitled to any lien, right or benefits hereunder; and such certificate of the said trustee upon any

such bond executed by the Bridge Company shall be conclusive evidence that the bond so certified has been duly issued hereunder, and that the holder is entitled to the benefit of the trust hereby created.

Before certifying or delivering any bond, all coupons thereon, then matured, shall be cut off, cancelled and delivered to the Bridge Company.

For the purpose of securing to the holders of any of the bonds to be issued hereunder that none of said bonds shall be issued except as herein provided, the said The Mercantile Trust Company or its successor in said trust, shall certify and deliver said bonds only upon written application of said Bridge Company, expressed through resolutions of its Board of Directors or Executive Committee, adopted from time to time at any regular meeting, or at any special meeting called for that purpose, wherein it shall be stated what amount of bonds are required at that time, and for what purpose; which resolutions shall be the authority, and sufficient authority, to said The Mercantile Trust Company, trustees, to certify to the extent so required any of said three million ($3,000,000) dollars, of bonds secured by this indenture. The said Bridge Company hereby covenants
76 and agrees to and with the said trustees that it will pay all lawful taxes and assessments upon the property hereby mortgaged at any time legally levied and assessed thereon; that it will suffer no mechanics', statutory or laborers' liens, which shall have priority to this mortgage to be created or placed on any part or portion of said property.

That it will at all times, when demanded by the trustees, keep said property insured in the same manner and to the same extent as insurance is usually taken out in such cases; and that it will carefully preserve all rights and franchises to it granted and upon it conferred, and will maintain, preserve and keep said mortgaged property, and every part and parcel thereof, in good repair, working order and condition, and will make all needful and proper repairs, renewals and replacements, alterations, additions, betterments and improvements.

And the said Bridge Company further covenants and agrees that it will at all times hereafter, as long as any of the bonds to be issued hereunder shall remain outstanding, keep an agency in the City of New York, for the registration of bonds and for all other lawful and necessary purposes hereunder, and that it will pay the principal and interest of the said bonds at the times and in the manner therein provided, and generally will do and perform all acts and things, promises and covenants in this indenture on its part to be done and performed.

Until default shall be made by the said Bridge Company in the payment of taxes and assessments upon the property herein mortgaged, or some part thereof, after ninety days' notice in writing by said trustees to it, requiring the payment thereof; or until default shall be made in the payment of principal or interest, or some part of either principal or interest as herein provided, or until default shall be made in respect to something herein required to be done, performed or kept by the said Bridge Company, it, the said Bridge Company shall possess, control, manage, operate, use and enjoy said bridge and approaches together with all franchises, real estate and

other property hereby mortgaged, and shall receive, take and use the rents, income, profits and tolls thereof for its own uses and purposes, as if this indenture had not been made.

In case the Bridge Company, its successors or assigns, shall fail to pay the interest on any of the said bonds at any time when the same shall become due and payable, according to the tenor thereof, and shall continue in such default for six months after such payment has been demanded at its or their agency in the City of New York, then and thereupon the principal of all the bonds hereby secured shall be and become immediately due and payable, provided said trustees shall give written notice to the Bridge Company, its successors or assigns, of their option to that effect, while such default continues, which notice it shall be bound to give if required in writing so to do by the holders of a majority of said bonds then outstanding; and in such cases, or upon the principal of the bonds becoming in any other way due and payable, and remaining unpaid, in whole or in part, after demand thereof, the said trustees may, in their discretion, and shall, upon the request of the holders of a majority of said bonds then outstanding, take, with or without entry or foreclosure, actual possession of said bridge, and of all
77 and singular the property, things and effects hereby conveyed, and personally or by attorney manage and operate the same, and receive all the tolls, rents, income and profits thereof, until such time as the said bonds and interest thereon are fully paid and satisfied, and shall apply the money so received by them, first, to the payment of all taxes and assessments legally levied and assessed against the said property which shall then be unpaid; next, to the expense of the trust hereby created, including reasonable compensation for their services as trustees, and for the services of all their agents and attorneys, and to the management of said bridge and its appurtenances, together with the payment of all proper and legitimate debts and obligations which are necessary to be paid in order to enable said trustees to continue in the possession, management and operation of said property; and, next, to the payment of interest overdue upon the said bonds, and afterward to the payment of the principal of the said bonds; and the said trustees, upon becoming entitled to take possession of the property aforesaid, may, at their discretion, and shall, at the written request of the holders of at least a majority of the bonds then unpaid and outstanding, cause the said premises so mortgaged to be sold, either as an entirety or in such parcels as they shall deem necessary and proper, having due regard to the interests of all parties, to the highest bidder at public auction in the City of Cairo, Illinois, giving at least sixty days' notice of the time, place and terms of such sale, and of the specific property to be sold, and whether the same will be sold as an entirety, or in parcels, by publishing such notice in one or more newspaper in the said City of Cairo, and also in the cities of St. Louis and Chicago, at least once in every week during the said term of sixty days, and that, upon receiving the purchase money therefrom, the said trustees shall execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance, in fee simple, which sale and conveyance shall forever be a

bar against the Bridge Company, its successors and assigns, and against all persons claiming under it or them, of all right, estate, interest or claim in or to the premises, property, things, franchises, privileges and immunities so sold, or any part thereof, whether the said trustees are in possession thereof or not, and the receipt of said trustees shall be a full and sufficient discharge to such purchasers, and no purchaser holding such receipt shall be liable for the proper application of the purchase money, or in any way bound to see that the same is applied to the uses of this trust, or in any way answerable for this loss or mis-application, or bound to inquire into the authority for making such sale.

The said trustees shall after deducting from the proceeds of such sale the costs and expenses thereof, and of the execution of this trust and all payments for taxes, assessments and counsel fees, and their own reasonable compensation, apply so much of the proceeds as may be necessary to the payment of the principal and interest remaining unpaid upon said bonds and coupons, without giving preference to either principal or interest; it being the intention of this indenture that, so long as the bridge and its appurtenances shall be managed by the trustees or receivers as going concern, the income shall be applied to the payment of interest in preference to the principal, but after a sale of the bridge and its appurtenances no such prefer-
78 ence shall be made in the distribution of the proceeds.

Upon any sale of the said premises, whether by the trustees of under a decree of a court of competent jurisdiction, the holders of the bonds hereby secured, or any of them, or the trustees on behalf of all the stockholders, shall have a right to purchase upon equal terms with other persons, and the bonds secured by this mortgage, with all matured and unpaid coupons, shall be receivable at their face value in payment of any bid made by or in behalf of bondholders at such sale; but if the gross amount realized from the sale, after payment of all necessary costs and expenses shall not aggregate the total amount of the bonds which may be turned in as cash, said bonds shall have endorsed upon their face the proportionate amount of the proceeds of said sale properly applicable to each, and shall be valid and effective as an obligation of the Bridge Company for any balance remaining unpaid thereon; but neither the debt, bonds or coupons secured hereby shall be enforced against the stockholders of said Bridge Company individually.

It is hereby expressly agreed that in no case shall any claim, benefit or advantage be taken by the Bridge Company, its successors, or assigns, of any valuation, appraisement, extension or relief laws to prevent such entry or sale as aforesaid, and that nothing herein contained shall be construed as limiting the right of the said trustees to apply to the courts for judgment or decree of foreclosure and sale under this indenture, or for the usual relief in the case of such proceedings; and the said trustees may, in their discretion, apply to any court of competent jurisdiction, for relief by way of foreclosure or otherwise, if so advised by counsel, instead of taking possession of, or selling, the property, when required to do so by bondholders; such right of foreclosure being cumulative, and in addition to other rights and remedies herein reserved to said trustees.

The Bridge Company, its successors and assigns, hereby covenants and agrees, with the said trustees, and their successors in the trust, that the proceeds of the bonds, to be issued as hereinbefore mentioned shall be applied in good faith to the construction and maintenance of the said bridge, and to the purchase of the lands, property and appurtenances of said bridge and its approaches, to the purchase of such rolling stock and floating equipment as the Bridge Company may deem necessary for the maintenance and operation of said bridge and property to the payment of interest on the cost of such construction, maintenance and purchases until the completion of said bridge and approaches, and to make all needful and proper repairs, renewals and replacements, alterations, additions, betterments and improvements.

The said Bridge Company shall and will keep the bridge and its approaches and other property in good condition and repair, and in case of the dilapidation or destruction of any part thereof from any cause whatever, it shall rebuild or restore the same; and in case of the failure of the Bridge Company to repair, rebuild or restore within a reasonable time, or in case of the neglect or omission of said Bridge Company to perform any of the provisions or comply with the requirements, terms and condition of this indenture, after written notice so to do has been served by said trustees, the
79 said trustees may, at their option, declare the whole principal sum secured by the said bonds to be then due and payable, and may proceed as in case of default in payment upon the maturity of such bonds.

The said Bridge Company, its successors and assigns, further covenants and agrees with the trustees, and their successors, in the trust, to make, execute and deliver all such further deeds, instruments and assurances as may, from time to time, be necessary, and as the trustees, or their successors in the trust, may be advised by counsel learned in the law to be necessary for the better securing of the trustees and their successors in the trust, the premises hereby conveyed, and for carrying out the objects and purposes of this indenture.

The said trustees, and their successors, in the trust, shall, upon the written request of the Bridge Company, its successors or assigns, convey or release any lands or other property which it may cease to use, or may find unnecessary for its corporate purposes; provided, however, that in such case the purchase money shall be paid over—the trustees, or property in lieu of the land or other property sold, equivalent in value to the property sold, shall be purchased by the Bridge Company and by it conveyed to the trustees, subject to all the provisions of this indenture.

Upon the payment of the principal and interest of all the bonds hereby secured, the estate hereby granted to the trustees shall be void and the right to all of the property hereby granted and conveyed shall be void and the right to all of the property hereby granted and conveyed shall revert to, and revest in, the Bridge Company, its successors or assigns, without any acknowledgment of satisfaction and conveyance surrender re-entry or other act; but

the trustees shall, upon such payment, on demand of the Bridge Company, execute such instruments of satisfaction, re-conveyance, surrender, etc., as the counsel of the Bridge Company shall advise to be necessary in the premises.

The trustees, or either of them, or their successors, may resign this trust, and shall be discharged from all liability as trustee or trustees thereafter accruing, upon delivering such resignation in writing, duly subscribed and acknowledged, to the Bridge Company, its successors or assigns, but in no case shall such resignation be effective until there shall have been a meeting of the bondholders, and until a majority in amount thereof shall have designated in writing a new trustee or new trustees to act as trustee or trustees of this indenture, and the trustees herein shall not be relieved from any of their obligations as trustees until they shall have, by satisfactory conveyance, vested in the new trustee or trustees selected by said bondholders all of their right, title and interest in the property and promises covered by this indenture.

A majority in interest of the bondholders hereinunder shall have the right at any time to remove either or both of the trustees hereinunder, or any successor or successors thereof, notice of such removal to be in writing, and delivered to the trustee or trustees to be removed, which said trustee or trustees shall thereupon, on demand, at once proceed, upon payment of reasonable compensation for services performed under the trust, including all necessary costs and expenses, to make conveyance to the new trustee or trustees named by said bondholders, of all the property and premises
80 hereunder, in such form as will vest in the substituted trustee or trustees all of the right, title and interest of said trustee or trustees in said property and premises, and all of its or their power, rights and authorities hereinunder.

In case of the death or disability of either of said trustees, a majority in interest of the said bondholders hereunder shall have the right to appoint a new trustee or trustees — shall succeed to all the rights, powers, duties *or trustees shall succeed to all the rights powers, duties* and obligation- of the trustee or trustees, and all of the right, title and interest of the trustee or trustees hereinunder in the property and premises hereinbefore described in this deed of trust.

The trustees shall not be under any obligation to take any action toward the execution or enforcement of the trusts hereby created, which in their opinion, will be likely to involve them in expense or liability, unless one or more of the holders of the bonds hereby secured shall, as often as required by the trustees, furnish them reasonable security and indemnity against any expense or liability; nor shall the trustees be required to take notice of any default hereunder, unless notified in writing of such default by the holders of at least a majority in amount of the bonds hereby secured then outstanding, and tendered reasonable security and indemnity as aforesaid, anything herein contained to the contrary notwithstanding; but the foregoing provisions of this section are intended only for the protection of the trustees, and shall not be construed to limit or affect any discretion or power by any provision of this indenture

given to the trustees to determine whether or not they shall take action in respect to such default or any power or discretion of the trustees to take action in respect to any default, without such notice or request from bondholders.

The trustees shall be entitled to reasonable compensation for all services rendered by them in the execution of the trust hereby created, which compensation, as well as their reasonable expenses necessarily incurred and actually disbursed hereunder, the Bridge Company agrees to pay, and the trustees shall have a lien prior to the lien of this indenture upon the property hereby mortgaged for the payment of their compensation and reasonable expenses incurred hereunder. The trustees shall not be answerable for the default or misconduct of any agent or attorney appointed by them in pursuance hereof, if such agent or attorney shall have been selected with reasonable care, nor shall the trustees be liable for anything whatever in connection with this trust, except for their wilful misconduct or gross negligence.

The word "trustees," wherever used in this instrument shall be construed to mean the trustees under this mortgage for the time being, whether original or substituted, and any substituted trustees shall possess all the rights and privileges, and be competent to exercise all of the powers, hereby granted to or conferred upon the parties of the second part as trustees hereunder.

In Testimony Whereof, Said Bridge Company and said The Mercantile Trust Company have caused their corporate names to be hereunto subscribed by their President or Vice-President, respectively, and their corporate seals to be hereto affixed and attested by their Secretaries, respectively, and said Robert R. Hutchinson has
81 hereunto set his hand and seal, the day and year first above written.

SOUTHERN ILLINOIS AND MISSOURI BRIDGE COMPANY,
By CHARLES C. WARNER, *President.*

[Southern Illinois and Missouri Bridge Company, Corporate Seal.]

Attest:
CHARLES W. HILLIARD, *Secretary.*

THE MERCANTILE TRUST COMPANY, AS TRUSTEE,
By H. C. DEMING, *Vice-President.*

[The Mercantile Trust Company, 1873.]

Attest:
E. R. ADEE, *Secretary.*

ROBERT R. HUTCHINSON, [SEAL.]
As Trustee.

STATE OF MISSOURI, *City of St. Louis, ss:*

On this 30th day of Dec., 1901, before me appeared Charles G. Warner, personally known to be the same person whose name is sub-

scribed to the foregoing instrument, who being by me duly sworn, did say that he is the President of the Southern Illinois and Missouri Bridge Company, and that the seal affixed to the foregoing instrument is the seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Charles G. Warner acknowledged said instrument to be the free act and deed of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 30th day of December, A. D. 1901.

My commission expires Sept. 4, 1904.

[L. S.] HENRY G. HERBEL,
Notary Public in and for the City of St. Louis and State of Missouri.

STATE OF ILLINOIS, *County of Cook, ss:*

On this second day of January, 1902, before me, a notary public, in and for the county of Cook, in the state of Illinois, appeared Charles W. Hilliard, personally known to me to be the same person whose name is subscribed to the foregoing instrument, who, being by me duly sworn, did say that he is the Secretary of the Southern Illinois and Missouri Bridge Company, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Charles W. Hilliard acknowledged said instrument to be the free act and deed of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this second day of January, A. D. 1902.

My commission expires May 1st, 1905.

[L. S.] HARRISON F. JONES,
Notary Public.

82 STATE OF NEW YORK, *County of New York:*

Be it remembered that on the fifteenth day of April, 1902, before me, Isaac Michaels, a notary public of the state of New York, in and for the county of New York, duly commissioned and qualified, personally appeared Henry C. Deming, to me personally known, and known to me to be the Vice-President of the Mercantile Trust Company, the corporation described in, and the same person who executed the foregoing instrument, and Ernest R. Adee, to me personally known, and known to me to be the Secretary of said The Mercantile Trust Company, the same person who executed said instrument; and the said Henry C. Deming and Ernest H. Adee, being by me severally duly sworn, did severally depose and say that he, the said Henry C. Deming, resides in New York City, state of New York, and he, the said Ernest R. Adee, resides in New York City, State of New York; that he the said Henry C. Deming is the Vice-President, and he, the said Ernest R. Adee, is the Secretary of The Mercantile Trust Company, the corporation described in and which executed the foregoing instrument, and that they know the corporate seal of said

corporation, that the seal affixed to the foregoing instrument was and is such corporate seal, of said corporation by authority of its Board of Directors, and that said instrument was signed and sealed in behalf and said Henry C. Deming and said Ernest R. Adee duly acknowledged said instrument to be the free act and deed of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my *nortial* seal at my office in the City of New York the day and year first above written.

My commission expires March 30th, 1904.

[L. S.] I. MICHAELS,
Notary Public for the County of New York,
State of New York. (*No.* 69.)

STATE OF MISSOURI, *City of St. Louis, ss:*

On this 30th day of December A. D. 1901, before me personally appeared Robert R. Hutchinson, to me known to be the same person described in, and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

I hereby certify the foregoing acknowledgment to have been made in conformity with the laws of the State of Missouri.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at the City of St. Louis, State of Missouri aforesaid, the day and year first above written.

My commisison expires Sept. 4, A. D. 1904.

[L. S.] HENRY G. HERBEL,
Notary Public in and for the City of St. Louis,
State of Missouri.

83 Recorder's Office.

STATE OF MISSOURI, *County of Cape Girardeau, ss:*

I, Chris. F. Betten, Recorder of said county, do hereby certify that the within instrument of writing, including the certificate of acknowledgment, was, on the 22nd day of April, A. D. 1902, at 11 o'clock 25 minutes A. M., duly filed for record in this office and is duly recorded in the records of this office, in trust book "T," page 520, &c.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in Jackson in said county, this 22nd day of April, 1902.

[L. S.] CHRIS F. BETTEN,
Recorder.

STATE OF ILLINOIS, *Alexander County, ss:*

I, Lee B. Davis, Recorder of Deeds in and for said county and state, do hereby certify that this instrument was filed for record on the 23rd day of April A. D. 1902, at the hour of 10:30 o'clock A. M., and duly recorded in book "30" of Mortgages, &c., on page 127, &c.

LEE B. DAVIS,
Recorder of Deeds.

STATE OF MISSOURI, *County of Scott, ss:*

I, V. L. Harris, Recorder of Deeds within and for the county of Scott, in the state of Missouri, do hereby certify that the foregoing is a copy of the mortgage of The Southern Illinois and Missouri Bridge Company, duly filed for record in this office on the 24th day of April, 1902, at 8 o'clock A. M.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at office in Benton this 17th day of May, 1902.

[L. S.] V. L. HARRIS,
Recorder of Scott County, Mo.

Mr. SMITH: I next offer, if the court please, section one, chapter 32, of the Revised Statutes of Illinois, 1901—this section, with other sections, being amendments of an act concerning corporations, approved April 18, 1872—enforced July 1, 1872—being the same section referred to in the charter of the Southern Illinois and Missouri Bridge Company, upon which the charter claims to have been issued.

Mr. MILLER: We object, if the court please, because irrelevant, immaterial and incompetent, and tends to prove no issue involved in these pleadings—the Supreme Court of this State has decided that and given specific directions.

The COURT: Objection overruled.

Mr. MILLER: We except.

84 *Chapter* 32, *Section* 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly that corporations may be formed in the manner provided in this act for any lawful purpose except banking, insurance, real estate brokerage, the operation of railroads and the business of loaning money, provided that horse and dummy railroads and organizations for the purchase and sale of real estate for burial purposes only, may be organized and conducted under the provisions of this act, and provided further that corporations formed for the purpose of constructing railroad bridges shall not be held to be railroad corporations.

Mr. SMITH: I now offer the printed transcript of the bill of exceptions made by the appellant under the rules of the Supreme Court of this State—the entire bill of exceptions relating to the testimony in the case of Southern Illinois and Missouri Bridge Company against R. G. Stone *et al.*

Mr. MILLER: We object to that, if the court please, as irrelevant, immaterial and incompetent, and does not tend to prove any issue in this case.

The COURT: Objection overruled.

Mr. MILLER: We except.

Bill of Exceptions.

STATE OF MISSOURI, *County of Dunklin, ss:*

In the Circuit Court of Dunklin County, May Term, 1902.

No. —.

SOUTHERN ILLINOIS & MISSOURI BRIDGE COMPANY, Plaintiff,
vs.
R. G. STONE ET AL., Defendants.

Condemnation Proceedings; trial by the Court, Hon. James L. Fort, Judge.

Appearances.

For the plaintiff—Messrs. W. H. Miller, Wilson Cramer.
For the defendants—Messrs. Jno. A. Hope, Giboney Houck and M. R. Smith.

Be it remembered that on the trial of this cause, the following proceedings were had. The plaintiff, to sustain the issues on *their* part, offered in evidence as follows:

(1.) Mr. MILLER: Plaintiff offers the file marks on the petition, which is as follows: Filed April 4th, 1902, at 10 o'clock and forty minutes A. M.; R. L. Stubblefield, Clerk; filed in the Circuit Court of Scott County, at Benton, Missouri, at 10:40 A. M.

85 (2.) We offer the summons, together with the Sheriff's return bearing date of April 25th, 1902, which is as follows:

(3.) The application for a change of venue, signed and sworn to by Robert G. Stone on the 8th day of May, 1902, and presented to Judge Riley at the time of the presentation of this petition, on the 9th of May, 1902, which is as follows:

(4.) Also the order of Judge Riley, together with the clerk's certificate, and made a matter of record, changing the venue in this case from the Circuit Court of Scott County to the Circuit Court of Dunklin County; commanding these parties to appear before Your Honor to-day, the 14th day of May, 1902; together with the certificate of the clerk that these are matters of record, which are as follows:

(5.) An Act of Congreee approved January 26th, 1901, authorizing the construction of this bridge as a railroad bridge, and post route at point named, which is as follows:

Act of Congress.

An Act to Authorize the Construction of a Bridge Across the Mississippi River at or near Gray's Point, Missouri.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That the South-

ern Illinois and Missouri Bridge Company, a corporation created and organized under and by virtue of the laws of the State of Illinois, its successors and assigns, be, and the same are hereby, authorized and empowered to erect, construct, maintain, and operate a bridge and approaches thereto over the Mississippi River from a point on the Mississippi River in Alexander County, in the State of Illinois, opposite the terminus of the St. Louis Southwestern Railway, at or near Gray's Point, in Scott County, in the State of Missouri, or from some other convenient point on said river in said Alexander County, Illinois, to some opposite point on said river in the State of Missouri, within the distance of three miles above or below the terminus of said railway. Said bridge shall be constructed to provide for the passage of railway trains, and, at the option of said corporation, its successors or assigns, may be so constructed as to provide for and be used also for the passage of wagons and vehicles of all kinds, for the transit of animals, and for foot passengers for such reasonable tolls as may be approved from time to time by the Secretary of War.

SEC. 2. That the bridge built, operated and maintained under this Act, and subject to its limitations, shall be a lawful structure and shall be recognized and known as a post route, upon which also no higher charge shall be made for the transmission over the same, of the mails, the troops, and the munitions of war of the United States than the rate per mile paid for the transportation of the same over the railways or public highways of other post roads in the United States; and equal privileges in the use of said bridge shall be granted to all telegraph and telephone companies; and the United States shall have the right of way across said bridge and its approaches for postal-telegraph or for telephone purposes.

86 SEC. 3. That any bridge built under this Act shall be a high bridge, with unbroken and continuous spans, and shall have at least one channel span, with a clear channel way at low water of not less than six hundred and fifty feet, and all other spans over the waterway, at a full-bank stage, shall each have a clear channel way at low water of not less than five hundred feet, and all said spans shall have a clear headroom of not less than sixty-five feet, measured from extreme high water as determined at the location of the bridge, to the lowest part of the superstructure of the bridge, or anything attached thereto: Provided, That such number of channel spans shall be built as may be recommended for the approved location by the board of engineers hereinafter provided, and that all channel ways shall be measured at right angles to the current of the river at the stage of water that is most important to navigation.

SEC. 4. That all piers shall be built parallel to the current of the river at the stage of water that is most important to navigation; and the bridge itself shall be built as nearly as may be at right angles thereto; and that riprapping or other protection from imperfect foundations, which will lessen the required water way, shall not be permitted; also that piers which would produce cross currents or bars dangerous to navigation shall not be constructed, and if,

after construction, any piers or accessory works are found to produce the above mentioned effects, or if any riprapping or other protection prohibited by these sections is found to exist, the nuisance shall be abated or corrected in accordance with existing laws.

SEC. 5. That the approaches to the bridge under this Act shall be so designated and constructed as not to interfere with the free discharge of the river in seasons of flood; and any encroachment on the high water cross sections by piers, solid embankments, or otherwise, which might result in unduly accelerating the high-water current at the site of the bridge shall not be allowed. If, by reason of the location of a bridge in or near a city harbor, or from any other cause, the channel span next the shore shall appear or become difficult of access at any season, because of the proximity of the river craft which are or may be moored at the bank, or from any other cause, then the person, company, or corporation owning, controlling, or operating said bridge shall either increase the width of the opening or span sufficiently, or shall, by purchase or otherwise, extinguish the right to obstruct the entrance to said span for a distance of from five hundred to one thousand feet above and below the bridge, as may appear necessary to the Secretary of War.

SEC. 6. That any person, company, or corporation constructing any bridge under authority of this Act shall build and maintain at all times, as accessory works to such bridge, such booms, piers, dikes, guard fences, and other devices as may be necessary to insure at all times a permanent channel for a sufficient distance above and below the bridge site, and for the guiding of rafts, steamboats, and other water craft safely under said bridge; and if at any time after the construction of the bridge and its accessory works
87 the approaches to the channel spans in the bridge built under this Act are found to be dangerous or difficult of access by any important class of river traffic the nuisance shall be abated or corrected in accordance with existing law.

SEC. 7. That the said company shall submit in triplicate to the Secretary of War, for his examination, upon a convenient scale, a design and drawings of the bridge, piers, approaches, and accessory works, and a map of the location, giving, for the space of at least two miles above and one below the proposed site, the topography of the banks of the river and the shore lines at high and low water, and this map shall be accompanied by another drawn on a scale of one inch to two hundred feet, giving, for a space of one-half mile above the proposed site and a quarter of a mile below, an accurate representation of the bottom of the river by contour lines two feet apart determined by accurate soundings, and also showing over the whole width of this part of the river the force and direction of the current at low water, at high water, and at least one intermediate stage, by triangulated observations on suitable floats; and these maps shall also show the location of other bridges, coal tipples, cribs, and all other structures projecting into the river at bank-full stage, in the vicinity, and shall give such other information as the Secretary of War may require for a full and satisfactory understanding of the subject. Said maps and drawings shall be referred

to the board of officers of the Corps of Engineers, United States Army, for examination and report, which board shall personally examine the site of the proposed bridge and shall hold a public session in the City of St. Louis, Missouri, to hear all objections thereto, of which public session due notice and invitation to be present shall be given to all interested parties by advertising, and such parties shall be allowed sufficient time for a full examination and consideration of the plans; and if said board of engineers reports that the location selected is unsuitable for a bridge, the bridge shall not be built at that location, or if said board reports that the plans presented are unfavorable to the interests of navigation at the site proposed the Secretary of War shall be authorized, on recommendation of said board, to refuse permission for the construction of a bridge at the proposed site until such changes in the design of the bridge or the location of its piers as may be deemed necessary shall have been made, and to require, in the same way, at the expense of the parties constructing such bridge, the construction of such dikes and other auxiliary structure as may be needed for confining the flow to a permanent channel for a distance of not less than one mile above the bridge site for a proper distance below, but in no case shall there be a reduction in the width or headroom of channel or other spans, or in the arrangement and length of accessory works required by this Act, unless such reduction is made necessary by the physical characteristics of the river in the locality where the bridge is proposed, or is shown clearly to be not injurious to the interest of navigation; and the proposed bridge shall be a lawful structure only when built in accordance with the plans as recommended by the said board of engineers appointed by the Chief of Engineers, United States Army, and the Secretary of War, and while so managed and kept in repair as to offer at all times reasonable and proper means for the passage of rafts, steamboats, and other water craft under said bridge, and while all the requirements of this Act are observed.

88 SEC. 8. That all persons, companies, or corporations owning, controlling or operating the bridge authorized by this Act, shall maintain at their expense such lights and other signals on the bridge as may be required by the Light-House Board, as well as such other lights and signals as may be necessary for the security of navigation in the vicinity of the bridge; and shall also be required to maintain such indications of the stage of water and the headroom under the bridge as the Secretary of War may direct.

SEC. 9. That all railroad companies desiring the use of any bridge constructed under this Act shall have, and be entitled to, equal rights and privileges relative to the passage of railroad trains or cars over the same and over the approaches there-, upon payment of a reasonable compensation for such use; and in case the parties interested shall fail to agree upon the sum or sums to be paid and upon the rules and conditions to which each shall conform in using said bridge, all matters at issue between them shall, upon the application of either party, be determined by the Circuit Court of the

United States in and for any district in which any portion of said bridge may be.

SEC. 10. That such alterations and changes as may be required by the Secretary of War, in accordance with existing law, in the bridge constructed under the provisions of this Act, so as to preserve free and convenient navigation, shall be made under the direction of the Secretary of War at the expense of the persons, companies, or corporations owning, controlling or operating said bridge; and the fact that said bridge was constructed under the supervision of the United States shall not be held to be a bar to the enforcements of this requirement.

SEC. 11. That the bridge construction under the authority of this Act shall be built under the general supervision of the Secretary of War, and no changes or alterations in plans shall be made during the construction of said bridge or after its completion unless said changes or alterations conform to the provisions of this Act and are recommended by the Chief of Engineers and approved by the Secretary of War. That during the original construction of said bridge, or in carrying out any authorized changes or repairs of said bridge, a navigable channel sufficient to accommodate the commerce of the river shall be preserved at all times at the site thereof, and the waterway of the river shall not be obstructed to a greater extent than is absolutely necessary, and such lights and buoys shall be kept on all cofferdams, piles, and other structures as may be necessary for the security of navigation; and any temporary obstruction or closing of any channel in customary use shall not be commenced until after due notice to navigation; and all cofferdams, piles, and other structures used in the construction or repair of said bridge shall be removed with- reasonable time after the completion or repair of said bridge.

SEC. 12. That the right to alter, amend, or repeal this Act is hereby expressly reserved, and the right to require, at the expense of the owners, the entire removal of any bridge constructed under the provisions of this Act whenever Congress shall decide that the public interest so require- is also expressly reserved; and the
89 United States shall not be liable for damages arising from the exercise of the rights thus expressly reserved.

SEC. 13. That if the construction of the bridge hereby authorized shall not be commenced within one year and be completed within three years from the date of approval of this Act, then this Act shall be null and void, and all rights hereby conferred shall cease and determine.

Approved, January 26, 1901.

Certified Copy Charter.

(6) A certified copy of articles of incorporation of this plaintiff, issued by the Secretary of State of the State of Illinois, September 28th, 1900, which are as follows:

STATE OF ILLINOIS, *County of Cook, ss:*

To Hon. James A. Rose, Secretary of State:

We, the undersigned, Myron J. Carpenter, Charles W. Hillar, Oliver S. Lyford, Henry A. Rubidge and Edmund P. Broughton, propose to form a corporation under an Act of the General Assembly of the State of Illinois, entitled "An act concerning Corporations," approved April 18, 1872, and all acts amendatory thereof; and, for the purpose of such organization we hereby state as follows, to-wit:

(1) The name of such corporation is Southern Illinois and Missouri Bridge Company.

(2) The objects for which said corporation is formed is to erect, construct, maintain and operate a bridge and approaches thereto over the Mississippi River from a point on the east bank of the Mississippi River in the County of Alexander in the State of Illinois to a point opposite thereto in the State of Missouri, which said bridge and approaches thereto shall provide for the passage of railway trains and, at the option of said corporation, its successors and assigns, may be so constructed as to provide for and be used also for the passage of wagons and vehicles of all kinds, for the transit of animals and for foot passengers, for such reasonable tolls as may be approved from time to time by the Secretary of War.

(3) The capital stock of said corporation shall be fifty thousand ($50,000.00) dollars.

(4) The amount of each share is one hundred ($100.00) dollars.

(5) The number of shares shall be five hundred (500).

(6) The location of the principal office of said corporation is in the City of Chicago in the County of Cook in the State of Illinois.

(7) The duration of said corporation shall be ninety-nine (99) years.

MYRON J. CARPENTER,
CHARLES W. HILLARD,
OLIVER S. LYFORD,
HENRY A. RUBIDGE,
EDMUND P. BROUGHTON,
Commissioners.

90 STATE OF ILLINOIS, *County of Cook, ss:*

I, Will H. Lyford, a Notary Public in and for the Cook County and State aforesaid, do hereby certify that on the 5th day of December, A. D. 1900, personally appeared before me Myron J. Carpenter, Charles W. Hillard, Oliver S. Lyford, Henry A. Rubidge and Edmund P. Broughton, to me personally known to be the same persons who executed the foregoing statement, and severally acknowledged that they executed the same for the purposes therein set forth.

In witness whereof, I have hereunto set my hand and seal the day and year above written.

WILL H. LYFORD,
Notary Public.

[SEAL.]

Filed Dec. 6th, 1900.

JAMES A. ROSE,
Sec'y of State.

STATE OF ILLINOIS,
DEPARTMENT OF STATE.

James A. Rose, Secretary of State, to all to whom these presents shall come, Greeting:

Whereas, it is being proposed by the persons hereinafter named to form a corporation under an Act of the General Assembly of the State of Ilinois, entitled, "An Act Concerning Corporations," approved April 18, 1872, in force July, 1872, and the amendments thereto, the object and purposes of which corporation are set forth in a statement duly signed and acknowledged according to law, and this day filed in the office of the Secretary of State.

Now, Therefore, I, James A. Rose, Secretary of State of the State of Illinois, by virtue of the power vested in and the duties imposed upon me by law, do hereby authorize, empower, and license Myron J. Carpenter, Charles H. Hillard, Oliver S. Lyford, Henry A. Rubidge and Edmund P. Broughton, the persons whose names are signed to the before mentioned statement, as Commissioners to open the books for subscription to the capital stock of Southern Illinois and Missouri Bridge Company, such being the name of the proposed corporation, as contained in the statement, at such times and places as the said Commissioners may determine.

In testimony whereof, I hereto set my hand and cause to be fixed the Great Seal of State. Done at the City of Springfield, this 6th day of December, A. D. 1900, and of the Independence of the United States the one hundred and twenty-fifth.

JAMES A. ROSE,
Secretary of State.

[SEAL.]

To James A. Rose, Secretary of State of the State of Illinois:

The Commissioners duly authorized to open the books of subscription to the capital stock of the Southern Illinois and Missouri Bridge Company, pursuant to license heretofore issued, bearing date the 6th day of December, A. D. 1900, do hereby report that they opened books of subscription to the capital stock of said company, and that the said stock was fully subscribed; that the following is a true copy of such subscriptions, viz.:

91 We, the undersigned, hereby severally subscribe for the number of shares set opposite our respective names, to the capital stock of the Southern Illinois and Missouri Bridge Company, and we severally agree to pay the said company, for each share, the *some* of one hundred dollars.

Name.	Shares.	Amount.
Myron J. Carpenter	100	$10,000.00
Edwin W. Winter	100	10,000.00
Russell Harding	100	10,000.00
F. H. Britton	100	10,000.00
C. G. Warner	100	10,000.00

That on the 27th day of December, A. D. 1900, at the Room 506 Ellsworth Building, 355 Dearborn street, Chicago, Illinois, at the

hour of eleven o'clock a. m., they convened a meeting of the subscribers aforesaid pursuant to notice required by law, which said notice was deposited in the postoffice, properly addressed to each subscriber, ten days before the time fixed therein, a copy of which said notice is as follows, to-wit:

To —— ——:

You are hereby notified that the capital stock of the Southern Illinois and Missouri Bridge Company has been fully subscribed and that a meeting of the subscribers of such stock will be held at Room 503, Ellsworth Building, 355 Dearborn street, Chicago, Illinois, on the 27th day of December, A. D. 1900, at eleven o'clock a. m., for the purpose of electing a Board of Directors for said company, and for the transaction of such other business as may be deemed necessary.

(Signed) MYRON J. CARPENTER,
CHARLES W. HILLARD,
OLIVER S. LYFORD,
HENRY A. RUBIDGE,
EDMUND P. BROUGHTON,
Commissioners.

That said subscribers met at the time and place in said notice specified, and proceeded to elect directors, and that the following persons were duly elected for the term of one year, viz.: Charles G. Warner, Myron J. Carpenter, Frank H. Britton, Russell Harding, Edwin W. Winter.

MYRON J. CARPENTER,
CHARLES W. HILLARD,
OLIVER S. LYFORD,
HENRY A. RUBIDGE,
EDMUND P. BROUGHTON,
Commissioners.

STATE OF ILLINOIS, *County of Cook, ss:*

On this 27th day of December, A. D. 1900, personally appeared before me, a Notary Public, in and for said County, in said State, Myron J. Carpenter, Charles W. Hillard, Oliver S. Lyford, Henry A. Rubidge and Edmund P. Broughton, and made oath that the foregoing report by them subscribed is true in substance and in fact.

92

[SEAL.] EDWARD H. SNEFF,
Notary Public.

Filed Dec. 28th, 1900.

JAMES A. ROSE,
Sec'y of State.

STATE OF ILLINOIS,
DEPARTMENT OF STATE.

James A. Rose, Secretary of State, to all to whom these presents shall come, Greeting:

Whereas, a statement, duly signed and acknowledged, has been filed in the office of the Secretary of State, on the 6th day of December, A. D. 1900, for the organization of the Southern Illinois and Missouri Bridge Company under and in accordance with the provisions of "An Act Concerning Corporations," Approved April 18th, 1872, and in force July 1, 1872, and all acts amendatory thereof, a copy of which statement is hereunto attached;

And, whereas, a license having been issued to Myron J. Carpenter, Charles W. Hillard, Oliver S. Lyford, Henry A. Rubidge and Edmund P. Broughton, as Commissioners to open books for subscription to the capital stock of said company,

And, whereas, the said Commissioners have, on the 28th day of December, A. D. 1900, filed in the office of the Secretary of State, a report of their proceedings under the said license, a copy of which report is hereunto attached.

Now, therefore, I, James A. Rose, Secretary of State of the State of Illinois, by virtue of the powers vested in me by law, do hereby certify that the said Southern Illinois and Missouri Bridge Company is a legally organized corporation under the laws of this state.

In testimony whereof, I hereto set my hand and cause to be affixed the Great Seal of State. Done at the City of Springfield, this 28th day of December, A. D. 1900, and of the Independence of the United States the one hundred and twenty-fifth.

JAMES A. ROSE,
Secretary of State.

[SEAL.]

(10c. Rev. Stamp.)

UNITED STATES OF AMERICA, *State of Illinois, ss:*

OFFICE OF THE SECRETARY OF STATE.

I, James A. Rose, Secretary of the State of Illinois, do hereby certify that the foregoing is a true copy of the articles of incorporation of the Southern Illinois and Missouri Bridge Co., the original of which is now on file in my office.

In witness whereof, I hereunto set my hand and affix the Great Seal of State, at the City of Springfield, this 25th day of April, A. D. 1902.

JAMES A. ROSE,
Secretary of State.

[SEAL.]

(7) A certificate issued by Sam B. Cook, Secretary of State of the State of Missouri, to the Southern Illinois and Missouri Bridge Company; showing the compliance with the statutes of Missouri, and bearing date of March 25, 1902. This is the original:

93 No. 817.

Certificate.

THE STATE OF MISSOURI:

Whereas, the Southern Illinois and Missouri Bridge Company, incorporated under the laws of the State of Illinois, has filed in the office of the Secretary of State, duly authenticated evidence of its incorporation, as provided by law, and has, in all respects, complied with the requirements of law governing Foreign Private Corporations.

Now, therefore, I, Samuel B. Cook, Secretary of State of the State of Missouri, in virtue and by authority of law, do hereby certify that said Southern Illinois and Missouri Bridge Company is from the date hereof duly authorized and licensed to do business in the State of Missouri for a term ending December 28th, 1950, and is entitled to all the rights and privileges granted to Foreign Corporations under the laws of this State, and that the amount of the capital stock of said Corporation is Fifty Thousand Dollars, and the amount of said capital stock represented in the State of Missouri is Twenty-five Thousand Dollars.

In testimony whereof, I hereunto set my hand and affix the Great Seal of the State of Missouri. Done at the City of Jefferson, this 25th day of March, A. D. Nineteen Hundred and Two.

[SEAL.]

SAM B. COOK,
Secretary of State,
By J. H. EDWARDS,
Chief Clerk.

Mr. W. E. ANGIER, being sworn on behalf of the plaintiff, testified as follows:

Direct examination by Mr. MILLER:

Q. What are your initials?
A. W. E.
Q. What is your business?
A. Civil engineer.
Q. What connection, if any, have you with the Southern Illinois and Missouri Bridge Company?
A. I am resident engineer.
Q. Resident engineer?
A. Yes, sir.
Q. As such, have you made surveys and plats of the western approach of the proposed bridge at or near Thebes?
A. Yes, sir.
Q. I will ask you to examine this paper, which I show you now, and tell the Court what it is? (Shows witness a paper.)
A. This is the plat showing the west approach to the bridge as located by me; showing the land we desire for the right-of-way.
Q. Is that a correct representation of the property on the west bank of the river sought to be condemned?

A. Yes, sir.
Q. You say it is?
A. Yes, sir.
Q. When did you make this survey?
A. This survey was made during February, and completed the plat and sent it to Mr. Britton, on the 21st.
Q. In making that survey, did you stake out the ground, put up stakes showing the location?
A. Yes, sir.
94 Q. That was all done during the months of January and February?
A. Yes, sir it was.
Q. I understand you to say that you placed stakes on the ground, when you made this survey?
A. Yes, sir.
Q. Do you know whether or not they are there yet?
A. Yes, sir, part of them are there yet.
Q. At the time you made the survey, you put these stakes upon the ground desired?
A. Yes, sir.

Cross-examination.

(By Mr. HOPE:)

Q. Does this colored line here show the right of way you desired?
A. Yes sir, what has been obtained and what is desired to be obtained.
Q. How far west from the river, now, does that right-of-way extend?

Mr. MILLER: We object to that except as applied to the lands sought to be condemned.
The COURT: Subject to the objection.

A. The distance from the river west is about two and a half miles.
Q. Two and one-half miles?
A. Two or three miles possibly.
Q. Now, designate here upon this plat the land that you claim belonged to Stone and Finley?
A. The property here.
Q. Designate it some way; designate it by the description given?
A. A line here two hundred feet wide from this point to that point.
Q. From the place marked 87 plus 87 to the river bank?
A. Yes, sir.
Q. What distance is that?
A. 4,535 feet.
Q. What does this green square upon this plat designate; situated south of what is marked H. M. & A. Railroad?
A. It is the property belonging to the Southern Illinois and Missouri Bridge Company.
Q. Is that to be part of the approach to the bridge also?
A. Yes, sir.
Q. What is designated here as red is also a part of the approach to the bridge?

A. Yes, sir.
Q. You say that entire distance is how much?
A. Something like two and one-half miles.
Q. What is the grade from the river?
A. There is not any excavation.
Q. How much cut?
A. 3500 yards.
Q. What is the average?
A. I could not give the average; the deepest is 45 feet.
Q. Is that next to the river?
A. No, sir.
Q. How is it where it strikes the bank?
A. It is very slight excavation; the land designated here by that brown color is to be used for building railroad tracks; the first is for the approach and the other is for the yard.
Q. What part is for the approach?
A. All of this distance from the river bank to this point.
95 Q. Well, what point; designate it?
A. The northwest corner of the land marked C. Roth.
Q. That is all.

Redirect examination.

(By Mr. MILLER:)

Q. The point where the bridge strikes the west bank of the Mississippi, how high is it above the water?
A. Sixty-five feet above the water.
Q. Sixty-five feet above high water?
A. Yes, sir.
Q. How high above the bank is the track to be laid?
A. About seventy feet above the bank.
Q. About seventy feet above the bank?
A. Yes, sir.
Q. Now then, part of this Stone property that we are seeking to acquire lies in the flat between that and the bluff?
A. Yes, sir.
Q. What is the distance between that and the high land?
A. Seven hundred and fifty feet, I guess.
Q. How high across that lowland—how high above the ground?
A. From seventy feet up to where it goes to the bank—it will probably average across there fifty feet.
Q. It will average fifty feet?
A. Yes, sir, taken as a whole.
Q. What do these dots indicate on this map?
A. Trees.
Q. Trees?
A. Yes, sir.
Q. You have acquired all the property indicated on this map, except the Stone land?
A. Yes, sir, I understand so.
Q. That is all.

Recross examination.

(By Mr. HOPE:)

Q. Has it been acquired in the name of the Southern Illinois and Missouri Company?

A. Yes, sir.

Q. Is not a great deal of it in the name of the Gray's Point Bridge Company?

A. No, sir, it is my belief that is is acquired in the name of the Southern Illinois and Missouri Bridge Company.

Q. Do you know it?

A. Yes, sir.

Q. Is not a part of it in the name of the St. Louis Southwestern Railway Company?

A. I am told that it was.

Q. Do you know it because you have been told, or have you seen the deed?

A. No, sir, I have not seen the deeds.

Q. How do you know it then?

A. I have been told by reliable parties.

Q. You are here testifying to what you have been told?

A. Yes, sir, in relation to the deeds, I am.

Q. Is it not a fact that part of its right-of-way has been taken in the names of the Gray's Point Terminal Railway Company; may not that be a fact?

A. I don't know anything about it.

96 Q. Isn't part of it taken in the name of Mr. Britton?

Mr. MILLER: We object to that, if the Court please.

A. No answer.

Q. You say there is a bluff west of the river?

A. Yes, sir.

Q. How far back from the river is that?

A. About 700 feet.

Q. How high is the bluff?

A. About 65 feet above high water.

Q. That is all.

Mr. MILLER: I now offer this plat which has been identified by the witness.

Recross examination.

(By Mr. HOPE:)

Q. Has this plat been recorded in the County Clerk's office of Scott County?

A. Yes, sir.

Q. When was it filed?

A. 10th of April.

Q. This company never filed no plats prior to that date?

A. No, sir.

Q. Who filed it in the County Clerk's office on the 10th of April?

A. I don't remember now.
Q. That is all.

Redirect examination.

(By Mr. MILLER:)

Q. It was filed the 10th of May instead of the 10th of April?
A. Yes, sir.
Q. That is all.

J. S. KOSLOWSKY, being sworn on behalf of the plaintiff, testified as follows:

Direct examination.

(By Mr. MILLER:)

Q. Mr. Koslowsky, what official connection, if any, have you with the Southern Illinois and Missouri Bridge Company?
A. I have been instructed to obtain the right-of-way for them.
Q. You are the right-of-way man?
A. Yes, sir.
Q. Did you make an effort to procure this right-of-way through the Stone land?
A. Yes, sir.
Q. Have you been unable to agree with them on their prices?
A. Yes, sir.
Q. Hence this condemnation suit?
A. Yes, sir.
Q. That is all.

Cross-examination.

(By Mr. HOPE:)

Q. You say that you made an effort to agree with Stone and Finley?
A. Yes, sir.
Q. When was that?
A. Last year and this year.
Q. Did you ever make an effort to get this land from anybody else, besides Stone and Finley?
97 A. I tried to get the land from parties who claimed they had an interest in it.
Q. Who were the parties?
A. Mr. Crowder, and he brought up a man by the name of L. B. Houck.
Q. You tried to buy the land from them, didn't you?
A. I made a proposition to them, since they claimed they had an interest in the land with Stone and Finley.
Q. They claimed to have an interest in the land with Stone and Finley, did they?
A. They said they would sell the right-of-way, provided we would buy the whole tract of land; and when I said to Mr. Crowder that I could not purchase the whole tract of 320 acres, that it was entirely

out of the question; he made the suggestion that I should go with him again and have a talk with Mr. Stone.

Q. Who made the suggestion?

A. Mr. Crowder.

Q. You say that he claimed an interest with Stone and Finley?

A. Yes, sir, that is what Mr. Crowder said.

Q. Now then, when was that?

A. That was on the 17th of April.

Q. 17th of April?

A. Yes, sir.

Q. What year?

A. This year.

Q. Where was it?

A. I went to Commerce to meet Mr. Stone and Mr. Stone he said, "This matter is out of my hands now; I have turned is over to Mr. Crowder," and I said "how?" and he says, "I gave him an option," and I said, "did you give him a written option, and for how long?" and he says, "this is not fair to ask me; you had better to see Mr. Crowder;" I went to Cape Girardeau and saw Mr. Crowder and Mr. Crowder told me that Stone and Finley owed him money, and that it was to secure himself that he had made an agreement with them, that in the case we bought all of the land he could get his money out of it; that he would be present when the land was paid for, and that he could get his money; that both of them owed him; I told him that the acquisition of this 320 acres was out of the question now, that we only wanted 20 acres. He said, you had better buy the whole tract; Mr. Miller was present, we was in the St. Charles Hotel in Cape Girardeau—I made him an offer for the right-of-way.

Q. Made who an offer?

A. Mr. Crowder; I says we will pay so much for the right-of-way, and he says "Well, I will go over to Commerce again and talk to Mr. Stone," he says, "My going into the deal was on the supposition that you were going to buy the whole tract of land;" he says, "If you don't buy the whole tract and merely the right-of-way, then you will have to see Stone again;" he says, "I will go there this evening and see Stone," and I says, "Hadn't I better go along with you?" and he says "Yes," and Mr. Miller says, "You better go with him," and I went that evening to see Stone.

Q. That was in Cape Girardeau?

A. Yes, sir.

Q. Where?

A. At the St. Charles Hotel.

98 Q. You went to Commerce?

A. Yes, sir.

Q. And came back?

A. Yes, sir.

Q. Did you have a further conversation?

A. Yes, sir, I told Mr. Crowder that not under any circumstances would I take the whole tract.

Q. Where were you then?

A. I was on the train.

Q. Well, after you got back off the train at Cape Girardeau, was there any further negotiations?

A. Yes, sir, on the next day and the next evening; I want to mention this so you can understand the whole thing; when we got on the train, he said to me, "I will go to Commerce to-morrow and see Stone and talk with him, and he said, that all that Stone wanted was something that was fair," he said that he could not see his own interest suffer, that they owed him money and that he wanted to secure his interest in this property: he says, "That is what brings me in, and if you don't take the whole tract, but merely the right of way, that lets me out;" I suggested to him, if he would not go and see Stone again, and he says I will go and see if I can get him to let you have this right-of-way."

Q. Who was present?

A. There was nobody else.

Q. Where was it?

A. It was on the train.

Q. That was as you came back from Commerce?

A. Yes, sir, then I said to him, "I want you to give me an answer by Saturday noon——

Q. What day of the week was this?

A. That was the same day, the 17th; the same day that we were at Commerce, and he said, "All right, I will let you know about Saturday noon;" and he says, "I will tell you exactly whether or not we will let you have the right-of-way and for what price."

Q. Who would let you have the right-of-way?

A. He said we.

Q. Whom did you understand him to mean?

A. Him and Stone.

Q. Did he tell you that?

A. No, sir, he never said that.

Q. He never said that?

A. He said we; he said then I will let you know, if we will let you have the right-of-way and what price, and what we want for the whole tract of land; I had some other business on Friday that took me away during the day and when I got back there in the evening, I found out that Mr. Crowder was in town, so I telephoned up to his house and asked him if he could give me a reply that night, so as to enable me to leave for St. Louis the next morning; and he said, "Well, you said I could give you a reply Saturday," and I said, "Yes, but I wish you would give it to me this evening, and so he said he would come over to talk to me; so he came over in company with L. B. Houck; and I says if you have saved me twenty-four hours; I says I know that no honest deal could be made that he was
99 in; Mr. L. B. Houck asked me several questions, if I was empowered to act for the company, and whether or not it was incorporated and authorized to do business in the State of Missouri?

Q. Give us the time and place you first saw Mr. Crowder about this?

A. I saw Mr. Crowder on the 17th of November—it was Wednesday—the first I saw him was at his house—it was about 11 o'clock.

Q. On the 17th?

A. Yes, sir.

Q. In the forenoon or afternoon?

A. It was in the forenoon; it was about 11 o'clock, when I came back from Commerce.

Q. Now, when was the next time you saw him?

A. Then I saw him the same day at the St. Charles Hotel.

Q. When did you see him next?

A. Then the next evening at the St. Charles Hotel, and about one-half or three-quarters of an hour later in the street.

Q. Was there anything said in the street about that matter?

A. Yes, sir.

Q. When did you see him next?

A. Do you want to know what was said in the street about this land?

Q. Yes, sir.

A. I said to him, "You recollect you promised to give me a price on the land, in case you would not make a price on the right-of-way," and he said, "Well, that is what I did;" and I says, "I want you to live up to your promise," and he says, "I cannot do anything without L. B. Houck," and I says, "All right, but I don't want anything to do with him, and you will favor me if you will come back to the hotel and bring me an answer," and he says, "All right, I will do so."

Q. When did you see him next?

A. He came back to the hotel about an hour later, and we went up to my room.

Q. Who was present?

A. Nobody, and he said to me, "How many acres do you think are along the river bank;" I took out my plat and measured it off, and I said as far as I could figure there must be between 45 and 50 acres, I cannot figure it out exactly; he said, "I would take this land along the river bank off your hands;" and he said, "It is more than I thought it would be," he says, "I would take that off your hand"—he says, "We will sell it to you for $30,000.00," and I said, "Good Lord! that is like highway robbery;" I says five-eighths of the land is in timber and not cultivated, and he says, "I take the fifty acres not cultivated on the river bank, and then you can have it for $25,000.00, and I says, "I will submit the proposition to my people."

Q. Well, when did you next see him?

A. I saw him at Cape Girardeau and Benton.

Q. Have you ever had any other talk or negotiation with him about it?

A. No, sir.

Q. Now the second time you saw him, you was there in the St. Charles Hotel in Cape Girardeau?

A. Yes, sir.

Q. Who was present there?

A. Mr. Miller.

Q. Anybody else?

A. There was a man there by the name of Mr. Hull, but
100 he did not take part in all the propositions that were made to him.

Q. You say the next evening you saw him at the St. Charles Hotel?

A. Yes, sir.

Q. Who was present at that time?

A. Nobody.

Q. But you and Mr. Crowder?

A. No, sir.

Q. Then afterwards L. B. Houck came?

A. He came in the back part of that same interview.

Q. How do you mean; you say that Mr. Houck came in later?

A. No, he brought Mr. Houck with him, and he says, "I will introduce you to Mr. Houck," and I says "No, thanks."

Q. Did Mr. Crowder explain to you why it was that he had refused and declined to submit any proposition, and negotiate at all with you, prior to that time; didn't Mr. Crowder tell you why it was, that prior to that time he had declined to negotiate with you; did he explain it?

A. He says, "Mr. Houck was out of town, and as he was in the deal with me, I did not want to do anything with you, until he came back.

Q. He made that proposition?

A. Yes, sir.

Q. Is it not a fact that prior to that time he had declined to make any proposition to you in regard to this land; the sale of this land, or any part of it?

A. Yes, sir; that is a fact.

Q. That is a fact?

A. Yes, sir.

Q. Prior to the time he brought Mr. Houck there to the St. Charles Hotel, he had declined to talk with you about it?

A. No, sir, he never declined to talk with me about it.

Q. He never discussed any proposition in regard to sale of it?

A. No, sir; he refused to discuss any proposition about the right-of-way; he wanted me to buy the whole farm, and I told him I could not do anything like that.

Q. Do you mean to say that prior to the time you met him and Mr. Houck there at the St. Charles Hotel, that you and Mr. Crowder had been discussing and negotiating about a sale of that land?

A. We had been talking about it.

Q. Had not he told you all the time, that he could not make you any proposition, or entertain any from you, up unto the time he met you and Mr. Houck?

A. No, sir, I never knew Mr. Houck was in the deal; when he brought Mr. Houck in there I says, "If you had told me that this man was in the deal, you would have obliged me and saved me twenty-four hours; that no honest deal could be made when he had anything to do with it."

Re-direct examination.

(By Mr. MILLER:)

Q. I will ask you, if in the conversation with Mr. Crowder at the St. Charles Hotel, if I did not ask Mr. Crowder if he had authority to make a proposition if we made him any?

A. Yes, sir.

101 Q. Didn't he say that he never had written authority?

A. Yes, sir.

Recross-examination.

(By Mr. HOPE:)

Q. Where was that, and when was it?

A. It was at the St. Charles Hotel on the 17th at noon; it was when he and I agreed to go to Commerce to see Stone again.

Q. You say you are employed by the Southern Illinois and Missouri Bridge Company?

A. No, sir.

Q. Who were you employed by?

A. By the Cotton Belt Railroad, but I said I was instructed to obtain right-of-way for the Southern Illinois and Missouri Bridge Company.

Q. Who gave you instructions?

A. The management of the Cotton Belt.

Re-direct examination.

(By Mr. MILLER:)

Q. The manager of the Cotton Belt Railroad is Vice President of the Southern Illinois and Missouri Bridge Company?

A. Yes, sir, I believe so.

Recross-examination.

(By Mr. HOPE:)

Q. You say the manager of the Cotton Belt Railroad is Vice President of the Southern Illinois and Missouri Bridge Company?

A. Yes, sir.

W. H. MILLER testified:

Direct examination.

(By Mr. CRAMER:)

Q. You state, Mr. Miller, your profession?

A. I am a lawyer.

Q. State what relation, if any, have you with the Southern Illinois and Missouri Bridge Company?

A. I am its attorney.

Q. Do you know Mr. John H. Crowder?

A. Yes, sir.

Q. And Mr. Kolsowsky, who just testified?

A. Yes, sir.

Q. I will ask you, if you know of any effort having been made by the Southern Missouri—by the Southern Illinois and Missouri Bridge Company to agree with Robert G. Stone and R. M. Finley and Nannie Finley upon a price for this land to be condemned for railroad purposes?

A. Only that the Vice President of the Southern Illinois Bridge Company instructed me to institute this condemnation suit; that Mr. Koslowsky, the right-of-way man, was unable to procure a right-of-way to the Stone land; I went to Cape Girardeau on the morning of the 17th of April to get directions by which to procure the necessary data; in company with Koslowsky and J. S. Hill; I think I met Mr. Crowder——

Q. What Crowder?

A. John H. Crowder; he was there and said in that con-
102 versation that Stone owed him and he wanted his money out of this property; and I asked him if he had authority to convey us the right-of-way in case we agreed upon a price; he said he didn't, that all he had—that he had no written option on the property; that he took a verbal agreement with Stone by which he was to have his money out of the property; he did suggest that we make him an offer and we offered him $2500.00 for the 20 acres; he said he would go and see Stone; he told me positively in that conversation that he had no written option from Mr. Stone, and that he could not make a trade with us; I want to say that in that conversation, that there was nothing mentioned directly or indirectly of anybody else being interested in the property.

Cross-examination.

(By Mr. HOPE:)

Q. That was on the 17th of April?

A. Yes, sir.

Q. You went from Jackson to Cape?

A. Yes, sir.

Q. For what purpose?

A. To get the data by which to bring the condemnation suit.

Q. Did you approach Mr. Crowder about the matter or did he come to see you?

A. I don't hardly know about that—but what he came to the hotel in answer to a telephone message from Mr. Hull or Mr. Koslowsky.

Q. Why did you telephone for Mr. Crowder?

A. Because Mr. Koslowsky had told me that Mr. Crowder was claiming some right in the premises.

Q. That is why he was sent for, because you understood that he had an interest in the land?

A. Yes, sir, because he had authority in the deal some way, but did not know what it was that he claimed to have.

Q. You afterwards learned that he had a written option?

A. No, sir, not until this day; if he did have one, he never told me.

Q. You knew when you filed this petition at Benton that he still claimed an interest in the land?

A. No, sir.

Q. You knew he was claiming an interest in the land?

A. No, sir, he never told me that he had an interest in the land; he told me that Stone owed him, and he wanted his money out of the money paid him.

Q. You saw Mr. Stone there?

A. No, sir, I saw him at Benton.

Q Didn't you hear him say, after the summons was served on him, that he had no interest in the land?

A. No answer.

Q. Did Mr. Koslowsky say that Mr. Stone had advised him that he had turned the land over to Crowder?

A. I know that Mr. Crowder was brought into the deal through the fact that he wanted to have the money.

Plaintiff rests.

103 *Defendants' Evidence.*

The defendants to sustain the issue on their part, offer in evidence as follows:

Mr. HOPE: We offer first, in support of our objections against this petition, an agreement entered into on the 2nd day of April, 1902, between R. M. Finley and his wife, and R. G. Stone and J. H. Crowder.

NOTE.—This is not in appellant's possession and cannot be set out. It is however a promise to buy the land for a given price within a given time.

Mr. MILLER: We object to this, because it is not a matter of record, is not and was not a matter of record; and for the further reason that the statute only requires in condemnation suits, that the parties, who are the record owners and tenants in actual possession, to be parties defendant, and not a party never on record.

NOTE.—This agreement is not in possession of appellant, but gives John H. Crowder a right to buy the entire farm in a given time for $15,000.00.

The COURT: Subject to the objection.

Mr. HOPE: Acknowledgment also goes with that offer, which is as follows:

(Clerk here copy agreement.)

Mr. HOPE: We next offer a warranty deed from R. M. Finley and A. A. Finley and R. G. Stone to John H. Crowder and Louis B. Houck and Gibony Houck; dated the 24th of April, 1902; conveying what is known as the Stone farm, and being 300 acres more or less, on the same land here which the road is seeking a right-of-way; recorded together with acknowledgment; dated April 14, 1902, and recorded the same day in the office of the Recorder of Deeds in Scott County, at 11:15 a. m., which is as follows:

Mr. MILLER: We desire to object to the deed, because it was not on record at the time of the institution of this suit.

The COURT: Subject to the objections.

Mr. HOPE: We next offer a deed for a right-of-way 300 feet wide, which is from John H. Crowder, Louis Houck and Gibony Houck to the Cape Girardeau and Thebes Bridge Terminal Railway Company, as a consideration—dated April 24, 1902——

Mr. MILLER: We object to that, and desire to see the original.

The COURT: When recorded?

Mr. HOPE: On the 24th day of April, 1902, at 4 o'clock p. m.

Mr. MILLER: We object to that; we object to the copy, because I want to see the original; because the copy is not competent.

The COURT: Subject to the objection.

Mr. MILLER: We object to that, further because it is not
104 the same land we are trying to condemn.

The COURT: Subject to the objection.

Mr. HOPE: We next offer a deed of correction for the right-of-way from John H. Crowder, Louis B. Houck and Gibony Houck to the same company, consideration $7,500.00; dated the 25th of April, 1902; acknowledged the same day, recorded the 25th of April, 1902, at three o'clock p. m.

Mr. MILLER: We make the same objection because the original and not the same land sought to be condemned by this plaintiff.

The COURT: Very well.

Terminal Railway Charter.

Mr. HOPE: We offer a certified copy issued by Sam B. Cook, Secretary of State; dated 24th of April, 1902, of the articles of association of the Cape Girardeau and Thebes Bridge Terminal Railway Company; together with the affidavit of the directors thereto annexed.

STATE OF MISSOURI, *ss:*

I, Samuel B. Cook, Secretary of State of the State of Missouri, hereby certify that the annexed pages contain a full, true and complete copy of Articles of Association of "The Cape Girardeau and Thebes Bridge Terminal Railroad Company," and of the affidavit of three of its directors thereto annexed, filed April 24th, 1902, as the same appears on file and of record in this office.

In testimony whereof, I hereunto set my hand and affix the Great Seal of the State of Missouri. Done at office in the City of Jefferson, this 25th day of April, A. D. 1902.

[SEAL.] SAM B. COOK,
Secretary of State.

Know All Men by These Presents: That we, the undersigned, do hereby associate ourselves together for the purpose of forming a corporation under the laws of Missouri, and more particularly under the provisions of Article 2, Chapter 12, Revised Statutes of 1899, to construct, maintain and operate a standard *guage* railroad for public use in conveyance of persons and property, have entered into the following agreement:

First. That the name of the corporation shall be "The Cape Girardeau and Thebes Bridge Terminal Railroad Company."

Second. That the corporation shall continue for a hundred years.

Third. That the railroad shall be constructed from a point on Houck's Missouri and Arkansas Railroad, at or near Frensdorf Junction, in section thirty-three (33), township thirty (30), north, range fourteen (14), east, in Scott County, Missouri, and extending through Section thirty-one (31), and Survey 794, to a point in Section two (2), township twenty-nine (29) north, range fourteen (14) east, in Scott County, Missouri, on the bank of the Mississippi River opposite Thebes, and where terminates, on the west, the Southern Illinois and Missouri Bridge as finally located by the Bridge Company,
105 and to which said railroad is intended to be and constitute the approach; that the length of the railroad as near as may be stated shall be three (3) miles; that the name of the county through which it is intended to run is Scott.

Fourth. That the amount of capital stock of this corporation shall be one hundred thousand (100,00-) dollars, divided into one thousand (1,000) shares of one hundred dollars each.

Fifth. That the board of directors shall consist of five persons, and that the following are the names and places of residence of those agreed upon to manage the affairs of the corporation for the first year and until others are chosen in their places:

Name.	Place of residence.
J. H. Crowder	Cape Girardeau, Mo.
J. A. Hawkins	Cape Girardeau, Mo.
T. A. Proctor	Cape Girardeau, Mo.
E. C. Gyle	Cape Girardeau, Mo.
F. F. Lincoln	Cape Girardeau, Mo.

In testimony whereof, we have hereunto subscribed our names, places of residence, and the number of shares each agrees to take in said company, this 22nd day of April, 1902.

Name.	Place of residence.	No. of shares.
J. H. Crowder	Cape Girardeau, Mo.	996
J. A. Hawkins	Cape Girardeau, Mo.	1
T. A. Proctor	Cape Girardeau, Mo.	2
E. C. Gyle	Cape Girardeau, Mo.	1
F. F. Lincoln	Cape Girardeau, Mo.	1

STATE OF MISSOURI, *City of Cape Girardeau, ss:*

On this 22nd day of April, 1902, before me personally appeared J. H. Crowder, J. A. Hawkins and T. A. Proctor, who, being duly sworn, each on his oath states that he is one of the directors named in the articles of association for the incorporation of the Cape Girardeau and Thebes Terminal Railroad Company; that at least one thousand dollars of stock for every mile of standard *guage* railroad proposed to be constructed is subscribed thereto, and 5 per cent. thereon in good faith in cash by the directors named in said articles of association,

has been paid, and that it is intended in good faith to construct, maintain and operate the standard guage road mentioned in said articles of association.

J. H. CROWDER.
J. A. HAWKINS.
T. A. PROCTOR.

Subscribed and sworn to before me, this 22nd day of April, 1902. My commission will expire October 23, 1905.

[SEAL.] MAUDE O. COCHRAN,
Notary Public.

Filed and copy issued April 24, 1902.

[SEAL.] SAM B. COOK,
Secretary of State.

Mr. MILLER: We object to that, because the corporation, upon its face, undertakes to incorporate over the property of the Southern Illinois and Missouri Bridge Company.

106 The COURT: Proceed.

Mr. MILLER: We except.

Mr. HOPE: We next offer a certified copy of the charter of the Southern Illinois and Missouri Bridge Company, incorporated under the laws of the State of Illinois; and several affidavits attached thereto; filed March 25, 1902; and a certificate authorizing the company to do business in Missouri; this certificate is dated April 29, 1902, which is as follows:

NOTE.—This is copied in plaintiff's offering.

Mr. HOPE: We offer next a temporary injunction in the cause of the Cape Girardeau and Thebes Bridge Terminal Railway Company against the Southern Illinois and Missouri Bridge Company, issued by Alexander Wright, Judge of the Probate Court of Scott County; together with the certificate of the Clerk of the Circuit Court of Scott County, which is as follows:

Dated May 3, 1902.

Temporary Injunction.

In the Probate Court of Scott County, County of Scott, State of Missouri. Before Hon. Alexander Wright, Judge. In Vacation.

CAPE GIRARDEAU AND THEBES TERMINAL RAILROAD COMPANY, a Corporation, Plaintiff,

vs.

SOUTHERN ILLINOIS AND MISSOURI BRIDGE COMPANY, Defendant.

Now comes the plaintiff, the Cape Girardeau and Thebes Bridge Terminal Railroad Company, which is a corporation organized and existing under the laws of the State of Missouri, for the purpose of constructing, maintaining and operating a railroad from a point on Houck's Missouri and Arkansas Railroad, at or near Frensdorf Junction, in Section 33, township 30 north, range 14 east, in said Scott County, and extending section 31 and survey 794 to a point in

section 2, township 29, range 14 east, in said Scott County, Missouri, on the bank of the Mississippi River opposite Thebes and where terminates on the west the Southern Illinois and Missouri Bridge as finally located by the bridge company and to which plaintiff's said railroad is to be and constitute the approach, before the undersigned Judge of the Probate Court of Scott County, Missouri, in the vacation of said Court, and shows to said Judge that it has instituted in the Circuit Court of said County, by petition filed therein setting forth its cause of action, its suit to permanently restrain the defendant, Southern Illinois and Missouri Bridge Company, a corporation under the laws of the State of Illinois, from entering upon the following described property of the plaintiff, viz.:

The right of way 300 feet in width, the center line thereof to be the center of the roadbed of the railway of the plaintiff as the same is now located, with the right of increasing the width of said 300 feet for necessary slopes, embankments and turn outs and with the right of changing the line of said railway or the grades
107 thereof at any time hereafter, and with the right of changing water courses, and with the right of felling any trees standing outside of said 300 feet which might endanger said railroad or its trains, and the right of taking a supply of water and of borrowing and wasting earth and stone for constructing or operating a railroad over and through all that part of fractional section 2, township 28, range 14, and U. S. P. Survey 794, in township 30, range 14, in Scott County, Missouri, which John H. Crowder, Louis B. Houck and Gibony Houck acquired from Richard M. Finley and Nannie E. Finley, his wife, and R. G. Stone by deed dated April 24th, 1902, and of record in the Recorder's office of said county, to which deed reference is hereby made for a more particular description of the land over and through which the said right of way and the said rights and privileges connected therewith extend.

The located center line of the right of way, mentioned is described as follows: Beginning at "O" Station on the top of the Mississippi River, in said fractional section 2, and run north 88 degrees 40 minutes west at station 3-93 center of Houck's Missouri and Arkansas Railroad, making the southwest angle therewith 95 degrees and 45 minutes, and at Station 5-85 P. C. of a 2 degree 31 minutes curve to the right; run on this curve at a 7-50 a 6 inch B. O. 11.8 feet to the left, 18 inch B. O. 15 feet 3 tenths feet to the right, at Station 10 a 40 inch B. O. 30.3 feet to the left, at Station 15 a 24 inch B. O. 8 feet to the left, and at Station 19-70 a P. T. a 4 inch W. O. 5.8 feet to right; run tangent north 56 degrees 30 minutes west to station 31-77 P. C. (This tangent produced to station 34-22 strikes a 30 inch poplar.) From Station 31-77 curve to left on a 2 degree curve to station 36-52 P. T.; run tangent north 66 degrees west to station 46-50, the west line of said survey 794, a point from which the southwest corner of said survey bears south 9 degrees west 1215 feet. Said center line is also marked by numbered stakes driven in the ground which are monuments in description.

The property described above is the same property acquired by the plaintiff from John H. Crowder, Louis B. Houck and Giboney

Houck by deed dated April 24th, 1902, and April 25th, 1902, and recorded in the Recorder's office of said county, to which deeds reference is hereby made for further description of said property.

And the plaintiff presents its said petition for a permanent injunction together with its application praying the undersigned Judge for a temporary injunction in the suit instituted by plaintiff as aforesaid.

And it appearing to the satisfaction of the undersigned Judge that there is not at this time any Circuit Court in session in said Scott County, and that reasonable notice in writing of the plaintiff's application for an injunction has been given to said defendant.

And it further appearing that plaintiff is entitled to the relief prayed for in its said petition and that the relief consists in restraining the commission of acts of the defendant in on and about the above described property, the commission of which during the pendency of said suit would produce injury to the plaintiff and that defendant is doing and threatens and is about to do acts in relation to said property and to subject-matter of said suit tending to render a judgment therein ineffectual; and the plaintiff having executed bond in the form and manner provided by law with security
108 which is approved by the undersigned Judge.

It is therefore ordered that said defendant, Southern Illinois and Missouri Bridge Company, its associates, counsellors, solicitors, attorneys, officers, agents contractors, servants, laborers and employés and all persons, firms, companies and corporations acting in aid of them or any or either of them, be, and they and each and every one of them, are hereby restrained and enjoined from entering in or upon the real estate and property hereinbefore described, from doing any drilling, boring or excavating or digging, or moving any earth or thing thereon or therein, from cutting any timber and doing any trespass whatever thereon, and from doing any act or thing upon or about said real estate and property tending to hinder or obstruct the plaintiff in the sole and exclusive use, occupancy and possession thereof, and from entering in or upon said real estate and property and from doing any act or thing in, upon or about the same by virtue of any proceeding, process, order, judgment, act or step, already taken or that may hereafter be had or taken in a certain cause pending in the Circuit Court of Scott County, Missouri, begun by said defendant on the 24th day of April, 1902, wherein said Southern Illinois and Missouri Bridge Company is plaintiff and Robert Stone, R. M. Finley and Nannie E. Finley, his wife, are defendants until the further order of the Circuit Court of Scott County, Missouri. It is further ordered that this writ together with the annexed petition therefor and the attached bond of this plaintiff be returned to and filed in the said Circuit Court, and that this writ be served, executed, and enforced according to law.

In witness whereof, I hereunto set my hand and affix my official seal at my office in the town of Benton, Scott County, Missouri, this 3rd day of May, 1902.

[SEAL.] ALEX WRIGHT,
Judge of the Probate Court of Scott County, Missouri.

Indorsed: Filed May 3rd, 1902. R. L. Stubblefield, Clerk.

STATE OF MISSOURI, *County of Scott, ss:*

I, R. L. Stubblefield, Clerk of the Circuit Court within and for the County and State aforesaid, hereby certify that the above and foregoing is a full, true and complete copy of the Temporary Injunction granted by the Probate Court of Scott County, Missouri, in the above mentioned cause as fully as the same remains on file in my office.

In witness whereof, I have hereunto set my hand and affixed the official seal of said Court, at office in Benton, Mo., this 3rd day of May, 1902.

[SEAL.] R. L. STUBBLEFIELD,
Clerk Circuit Court, Scott County.

Mr. MILLER: We object to that, for two reasons; in the first place, this writ has never been served upon anybody; in the second place, there is no power of the Probate Judge to enjoin the Circuit Court in his own Court.

The COURT: Proceed.

Mr. MILLER: We except.

109 ROBERT G. STONE testified:

Direct examination.

(By Mr. HOPE:)

Q. State your name to the Court.
A. Robert G. Stone.
Q. Are you one of the defendants in this case?
A. Yes, sir.
Q. Where do you live, Mr. Stone?
A. At Commerce.
Q. In the vicinity of Commerce, Scott County, Missouri?
A. Yes, sir.
Q. How long have you lived there?
A. Well, I have lived in Scott County all my life.
Q. What is your occupation?
A. Farmer.
Q. Do you know J. S. Koslowsky?
A. Yes, sir.
Q. Did he ever come to see you about some land you owned on the Mississippi River in Scott County; that you did own?
A. Yes, sir.
Q. When did he come to see you?
A. Well, I think the first time he come to see me was in June last.
Q. Did he come to see you after that?
A. Yes, sir.
Q. When was that?
A. It was in April.
Q. This last April?
A. Yes, sir.
Q. What took place between you?

A. Well, he mentioned that he wanted to buy the right-of-way through the place.

Q. Through what place?

A. The place we own; I told him I was not in a condition to make any price on it; that Mr. Crowder had an option on it; that I wasn't in a condition to make a price on the property.

Q. You say that you had given Mr. Crowder an option and so you told him?

A. Yes, sir, I told him so.

Q. Do you remember what time it was, that you gave that option to Mr. Crowder?

A. Why, it was the 2nd or 3rd of April; the 3rd, I think.

Q. Was it in writing?

A. Yes, sir.

Q. Witness is shown a paper dated April 2, 1902, purporting to have been signed by Finley and his wife and R. G. Stone, and asked to state, if that is the option, or contract he gave to Crowder?

A. Yes, sir.

Q. At the time you gave Mr. Crowder this option, who else was interested in the land or owned it with you?

A. My sister and her husband, Mr. Finley.

Q. Well, was this option or contract consummated by the sale and transfer of the property to Mr. Crowder?

Mr. MILLER: We object to that, if the Court please, because the statute fixes who is to be defendant in a suit of this kind.

A. Yes, sir.

Q. On what day, and what place?

A. Well, it was at Benton.

Q. Who was present?

A. My sister and her husband.

Q. You mean Mr. and Mrs. Finley?

A. Yes, sir, and the Notary Public.

110 Q. What was the Notary's name?

A. Welker.

Q. You and Mr. Finley and his wife went there and executed and acknowledged a deed conveying this land?

A. Yes, sir.

Mr. MILLER: We object, because the deed speaks for itself.

The COURT: Proceed.

Mr. MILLER: We except.

Q. What time of day was it?

A. Right around 10 o'clock.

Q. Was it after 10 o'clock?

A. Well, very little, if any.

Q. How much after 10 o'clock, if any?

A. Five or ten minutes, possibly.

Q. Not longer than ten minutes after 10 o'clock?

A. No, sir.

Q. The deed was turned over to Mr. Crowder; delivered to him?

A. Yes, sir.

Q. What had you and Mr. Finley otbained?
A. We obtained a check for $15,000.00; his check for $5,000.00, Louis B. Houck's check for $5,000.00, and Gibony Houck's check for $5,000.00.
Q. That took place at 10, o'clock?
A. Yes, sir.
Q. After that, were you served with any summons?
A. Yes, sir.
Q. Had you been served with any notice or summons issued in favor of the Southern Illinois and Missouri Bridge Company, prior to this transaction there in the Notary's office?

Mr. MILLER: We object to that, because the statute says that the filing of the petition is the commencement of the suit.

A. No answer.
Q. Did you own any interest in the land at the time the sheriff served summons on you?
A. No, sir.
Q. Do you own any interest now?
A. No, sir, except one acre we received for graveyard purposes.
Q. Do you own any interest in it now?
A. No, sir.
Q. Nor at the time the sheriff served the summons on you?
A. No, sir.
Q. Nor have not since you delivered the deed to Mr. Crowder and received the $15,000.00 in checks?
A. No, sir.
Q. Now, did Mr. Koslowsky know that you had sold this land; did you tell him?
A. Yes, sir, I did.
Q. When was that; prior to this transaction there in the Notary's office?
A. No, sir, it was after the transfer.
Q. You had a conversation with him before that, hadn't you; before the time you executed the deed and got the $15,000.00?
A. At one time.
Q. He had been to see you about this prior to the 24th of April, hadn't he?
A. Yes, sir.
Q. Who did you tell him owned it the first time?
111 A. Before I gave the option, I told him Mr. and Mrs. Finley and I owned it.
Q. After you gave the option, what did you tell him?
A. I told him that I was in no condition to make a price on the property, that he would have to go to Mr. Crowder.

Cross-examination.

(By Mr. MILLER:)

Q. Mr. Stone, Mr. Crowder paid you $500 the time you gave him this option, didn't he?
A. No, sir.

Q. The paper says, is it true or not?
A. No, sir, it isn't true.
Q. It isn't true?
A. No, sir.
Q. This option was signed within the last three days, wasn't it?
A. No, sir.
Q. You say they paid you three $5,000.00 checks?
A. Yes, sir.
Q. Have you got the checks yet?
A. No, sir.
Q. What did you do with them?
A. Had them cashed.
Q. All of them?
A. Yes, sir.
Q. Didn't you owe Mr. Crowder some money?
A. No, sir, didn't owe him a dollar.
Q. Don't you owe him a lot of money now?
A. No, sir; I owed him some money I owe him yet.
Q. Did he keep it out of this transaction?
A. No, sir.
Q. Where did you cash these checks?
A. At the Sturdivant Bank.
Q. Did you cash all three of them?
A. The cashier of the Commerce Bank took the checks that evening; he said he had to go to the Cape that evening and he took them and had them cashed, and brought the money back.
Q. You say you have no interest in this lawsuit?
A. I have no interest in the lawsuit?
Q. You don't care which way it goes?
A. No, sir.
Q. You made them a deed before you was sued?
A. Yes, sir.
Q. You had no interest in the property when you were sued?
A. No, sir.
Q. You have none now?
A. No, sir.
Q. Have you employed counsel in this case?
A. How is that?
Q. Have you employed counsel in this case?
A. I authorized Mr. Crowder to employ these gentlemen.
Q. You have not spoken a word to them about it?
A. Yes, sir, I think I have.
Q. Did you make this affidavit for a change of venue from Judge Riley?
A. Yes, sir.
Q. What did you do that for?
A. I was advised that he was prejudiced in the matter.
Q. Prejudiced against whom?
A. I consider that I was interested a little.

Mr. HOPE: We object, because he has no right to inquire into that matter at all.

A. After I got my money for the property, I made them
112 a warranty deed, and I was anxious for them to have a title to it.

Q. Now, you say you have no interest in the lawsuit?

Mr. HOPE: I object to his answering that question, if the Court please.

The COURT: Proceed.

Q. Did you make this affidavit for a change of venue?
A. Yes, sir.
Q. Mr. Crowder is paying your counsel, isn't he?
A. He has not been paid.
Q. Is he to do it?

Mr. HOPE: We object to that, about his relations with counsel; this is a matter they have no right to inquire into.

Q. Is Mr. Crowder and Mr. Houck to pay your attorney in this case?
A. I guess so.

Mr. HOPE: We object to that.

Q. You say that this deed was acknowledged about five minutes after 10 o'clock?
A. Yes, sir.
Q. How did you know it?
A. I remember Mrs. Walker mentioning the time about the time the acknowledgment was taken, that it was 10 o'clock, and that she would have to go in and start dinner.
Q. Mrs. Walker mentioned that?
A. Yes, sir.
Q. How far did Mr. Walker live from the Recorder's office, it is about a half a block, isn't it?
A. Yes, sir, possibly more.
Q. Didn't Mr. Crowder take the deed and go direct to the Recorder's office?
A. No, sir, he set there and talked about five minutes.
Q. He sat there and talked about five minutes?
A. Yes, sir.
Q. That makes it ten minutes after 10 o'clock?
A. Yes, sir.
Q. Then he went to the Recorder's office?
A. Yes, sir.
Q. How long would it take him to walk from Mr. Walker's house to the Recorder's office?
A. I don't know.
Q. Well, a minute, wouldn't it?
A. Yes, sir.
Q. If he did not get there until 11:15, you are mistaken about the time are you not?
A. I don't know what time he got there; I don't know that he went directly to the Recorder's office; I just mentioned that he stayed

there about that time, after the deal had been consummated, and then he got up and went away.

Q. Wasn't you served with a summons before you went to Walker's office?

A. No, sir.

Q. How long after it was it?

A. Half an hour or more.

Q. Half an hour or more?

A. Yes, sir.

Q. I- wasn't less than half an hour?

A. I think it was more.

Q. You think it was more?

A. Yes, sir, probably.

113 Q. Do you know whether or not his deed was on record then, when you was served?

A. I don't know.

Q. Don't you know it wasn't?

A. No, sir, I know they had the deed, and I had the check in my pocket.

Q. You declined to tell Mr. Koslowsky that Mr. Crowder had a written option?

A. No, sir, I told him that he had an option on the land.

Q. Didn't you tell him that it wasn't fair to ask whether or not it was written?

A. He wanted to know what the consideration was, and the length of time; he never asked whether or not it was written.

Q. Who had possession of the option up until the suit was brought?

A. Mr. Crowder, I suppose.

Q. Mr. Crowder?

A. Yes, sir.

Q. You lived on Mr. Crowder's fa.m?

A. Yes, sir.

Q. And have for a good many years?

A. Yes, sir, have been on his farm for three years.

Q. For three years?

A. Yes, sir; then I have been on his farm before this; I moved there and went back; I have lived on his farm about six years altogether.

R. M. FINLEY testified:

Direct examination.

(By Mr. HOPE:)

Q. State your name to the Court.

A. R. M. Finley.

Q. Where do you live?

A. In Scott County, near Sikeston.

Q. How long have you lived there?

A. About five years.

Q. What is your occupation?

A. Farming.

Q. Nannie Finley is your wife?
A. Yes, sir.

Mr. MILLER: We object to this gentleman testifying, because he is the husband of the party claiming the interest in this land.
The COURT: Proceed.
Mr. MILLER: We except.

Q. Do you know the land that is called the Stone farm, and over which, these plaintiffs are trying to get a right-of-way in this proceedings?
A. Yes, sir.
Q. I will ask you, if you and your wife and Mr. Stone ever sold that land to Mr. Crowder together with L. B. Houck and Gibony Houck?
A. Yes, sir.
Q. You did?
A. Yes, sir.
Q. Witness is shown a written contract dated April 2, 1902, purporting to be signed by Finley and wife, and R. G. Stone, and asked if that is the contract, by which he sold that land to Mr. Crowder?
A. Yes, sir.
Q. Was that contract consummated and completed by the execution and delivery of the deed conveying this land?
A. Yes, sir.
Q. When did the signing, delivery and asknowledgment of the deed take place?
A. The 24th of May.
Q. May or April?
A. It was in April, during the Circuit Court in Scott County.
114 Q. At whose office or house ?
A. Mr. Walker's house.
Q. Who is Mr. Walker?
A. Well, Mr. Walker; this old man Jimmie Walker.
Q. What position; what office does he hold?
A. His son is a notary public.
Q. Who was present at the time of this indenture?
A. J. H. Crowder, R. G. Stone and my wife, and Jimmie Walker and Mrs. Walker.
Q. And your wife?
A. Yes, sir.
Q. What took place there?
A. We gave Mr. Crowder and parties a warranty deed to the land and received checks amounting to $15,000.00.
Q. What time of the day did this take place?
A. I don't know, I could not tell to the minute what time it was; it was right around ten o'clock; I didn't notice the clock; I didn't expect any trouble or anything of the kind.
Q. You say that you and your wife and Mr. Stone signed the deed and delivered it to Mr. Crowder?
A. Yes, sir.
Q. And he delivered you $15,000.00 in checks?
A. Yes, sir.

Q. Were you afterwards served with a summons?
A. Yes, sir.
Q. How long after the acknowledgment and delivery of the deed, was it, until the sheriff served you with this summons?
A. I don't know, it was some little length of time; I had been at the Court room some little bit.
Q. At the time this notice was served on you, did you own any title or interest in the land?
A. No, sir.
Q. None at all?
A. No, sir.
Q. What became of it?
A. I sold it to Mr. J. H. Crowder and the two Houcks.
Q. Do you own any title, interest or estate of any kind or character in this land, at this time?
A. No, sir.
Q. And have not owned any since you delivered the deed?
A. No, sir.

Cross-examination.

(By Mr. MILLER:)

Q. What was your first name?
A. Hiram Finley.
Q. This place called the Stone farm belonged to Stone's father?
A. Yes, sir; my wife inherited her interest in the place.
Q. Now, Mr. Finley, who wrote this paper; this contract?
A. Mr. Stalcup at Sikeston.
Q. When?
A. I don't know, sir, isn't it dated there?
Q. Was it written on the date it bears, on the 2nd of April?
A. Yes, sir, that is right.
Q. Where were you when this paper was signed?
A. I was in Commerce.
Q. Was your wife there?
A. No, sir.
Q. Where was your wife?
A. She was in Sikeston.
Q. Do you mean when this paper was signed and acknow-
115 ledged?
A. We was in Sikeston that day; I took my wife to Sikeston, and took the acknowledgment before a notary public there.
Q. There was no money exchanged hands, at the time this paper was made, was there?
A. No, sir.
Q. Did you ever tell Mr. Koslowsky, the right-of-way man for the Southern Illinois and Missouri Bridge Company, that this paper was made?
A. No, sir; I never had occasion to; I never saw him.
Q. You had no talk with him at all?
A. No, sir.

Q. Who had this paper from the time you signed and acknowledged it?
A. J. H. Crowder.
Q. J. H. Crowder?
A. Yes, sir, he is the man I delivered it to.
Q. For what purpose did you deliver it to him?
A. For the purpose of selling the land.
Q. For the purpose of selling the land?
A. Yes, sir.
Q. You was to sell the land for $15000.00?
A. Yes, sir.
Q. Now, on what date did you make this deed?
A. The deed was made on the 24th, I think.
Q. On the 24th?
A. Yes, sir.
Q. At Benton?
A. Yes, sir.
Q. Did you go there that day from Sikeston?
A. Yes, sir.
Q. What time was it, now, that the deed was prepared?
A. I could not tell you just to the minute; it was right around 10 o'clock.
Q. It was while you was up at Mr. Walker's house?
A. Yes, sir.
Q. At Jimmie Walker's?
A. Yes, sir, the business was transacted at old man Jimmie Walker's.
O. At that place you signed the deed, did you?
A. Yes, sir.
Q. All three of you?
A. Yes, sir.
Q. All three took the acknowledgment?
A. Yes, sir.
Q. What became of the deed; after he took the acknowledgment?
A. It was turned over to Mr. Crowder.
Q. Who handed it to him?
A. I don't know just who.
Q. You saw it delivered, did you?
A. Yes, sir.
Q. What did Mr. Crowder do then?
A. He delivered us the checks.
Q. What else did he do there?
A. He stayed there and talked some little bit in the room, and then went to town.
Q. About how long did he remain there, after he got his deed?
A. I can not say positively.
Q. Give us your best judgment.
A. I suppose some ten or fifteen minutes, possibly.
Q. Do you know where he went?
—. He went down to town.
116 Q. Did you go with him?
A. No, sir.

Q. Do you know where he went?
A. No, sir, I don't know where he went.
Q. You say after that you was served with a summons in this suit?
A. Yes, sir.
Q. How long after that?
A. Well, I don't know, possibly an hour.
Q. Possibly an hour?
A. Yes, sir.
Q. You executed the deed?
A. Yes, sir.
Q. Did Mr. Crowder speak to you about the facts, that a suit had been brought?
A. No, sir, he didn't.
Q. You knew it?
A. No, sir, I knew nothing of it.
Q. You knew nothing of it?
A. No, sir.
Q. Where were you when the sheriff served notice on you?
A. I was in the court house.
Q. Was Stone there at the time?
A. No, sir, I never saw Stone at the time the papers was served. on me.
Q. Where was your wife?
A. Up at her aunt's, Mrs. Walker.
Q. Still at the house where the acknowledgment was taken?
A. Yes, sir.

JAMES WALKER testified:

Direct examination.

(By Mr. HOPE:)

Q. State you name to the Court.
A. James R. Walker.
Q. Where do you live?
A. Benton, Scott County, Missouri.
Q. What official position, if any, do you hold?
A. I am a notary public.
Q. How long have you been notary public, or when does your commission expire?
A. I was qualified in July, 1900, and commission expires July, 1904.
Q. Did you have occasion to take the acknowledgment of any deed from R. G. Stone, and R. M. Finley and his wife, to J. H. Crowder, L. B. Houck and Giboney Houck?
A. Yes, sir.
Q. On what date?
A. I could not tell you the exact date; I never knew that I would be called upon for this purpose; I can tell by looking at my books. I have a day book in my pocket, I can tell by looking at that; it was during the Circuit Court of Scott County.
Q. During the Circuit Court of Scott County?

A. Yes, sir.

Q. Who was present at the time you took the acknowledgment?

A. Why, Mr. Finley and Mr. Finley's wife, Mr. Stone and my mother; I believe that was all——

Q. Was there anybody else?

A. Mr. Crowder.

Q. Now tell the jury just what took place.

A. Well, in the first place, Mr. Crowder called me and asked me if I was a notary public, and I told him "Yes," and he told me he wanted me to come up to my father's house and take the acknowledgment of a deed, or deeds, that Mr. Finley's wife was there;
117 we had been there, I suppose, a minute or two, when Mr. Finley and Mr. Stone came ,and I took the acknowledgment as soon as they came.

Q. Took acknowledgment of what?

A. A deed to the land formerly known as the old Stone place.

Q. From whom to whom?

A. From R. G. Stone, Nannie Finley and R. M. Finley——

Q. To whom?

A. J. H. Crowder, L. B. Houck and Giboney Houck.

Q. After you took the acknowledgment, what followed?

A. Why, I handed the deed to Mr. Stone, and Mr. Stone handed it to Mr. Crowder, and Mr. Crowder handed him three checks.

Q. Well what followed then?

A. I don't know of anything especially that followed afterwards; I left there soon afterwards; we stayed there, I suppose, five or ten minutes.

Q. What time of day was it this deed was delivered by Mr. Stone to Mr. Crowder, and when Mr. Crowder turned the check over to Mr. Stone?

A. It was 10 o'clock—possibly ten minutes past ten.

Q. Possibly ten minutes past ten?

A. Yes, sir.

Q. In the morning or afternoon?

A. In the morning—I had started in the first place—the hack that comes up from the depot and brings bread—I am in the grocery business there and handle bread, and that morning I had failed to get the bread, and had started to notify my customers that I had no bread, when Mr. Crowder called me. afterwards, when I got to my mother's house, the clock struck, and she says, I will have to go and see about dinner, it is ten o'clock; so that is the cause of my knowing the time of day.

Mr. MILLER: No cross-examination.

J. H. CROWDER testified:

Direct examination.

(By Mr. HOPE:)

Q. State your name to the Court.

A. J. H. Crowder.

Q. Where do you live, Mr. Crowder?

A. At Cape Girardeau.

Q. Do you know Robert G. Stone and R. M. Finley and Mr. Finley's wife?

A. Yes, sir.

Q. Do you know J. S. Koslowsky?

A. Yes, sir; I know him.

Q. I will ask you, Mr. Crowder, if you, at any time entered into a contract with Mr. Stone, Mr. Finley and his wife, for the purchase of about 300 acres of land known as the Stone farm, in Scott County, Missouri?

A. Yes, sir; I did.

118 Q. Was that contract in writing?

A. Yes, sir.

Q. I will show you this contract, which bears date of April 2nd, 1902, and purporting to have been signed by R. G. Stone, R. M. Finley and wife, and ask you, if that is the contract made and entered into?

A. Yes, sir; that is the one.

Q. Was there a deed finally taken from Mr. Stone and Mr. Finley and his wife?

A. Yes, sir.

Q. At what date?

A. About the 24th, I believe.

Q. 24th of April?

A. Yes, sir.

Q. Where were you at the time the deed was executed and acknowledged?

A. I was at Benton.

Q. At what place in Benton?

A. At Mr. Walker's house.

Q. Now, tell in your own way what took place there at Mr. Walker's?

A. Well, I took a notary public up there, because Mrs. Finley was up there, and in a few minutes Mr. Finley and Mr. Stone came up and the notary took the acknowledgment, and I paid them for the land and took the deed.

Q. What time of the day was it, when you paid for the land, and took the deed?

A. It was about 10 o'clock, as near as I recollect.

Q. Did you know at that time, that any petition for the condemnation of this land, or any part of this land, by the Southern Illinois and Missouri Bridge Company had been filed in court?

A. No, sir; I didn't.

Q. You say that you know Mr. Koslowsky?

A. Yes, sir.

Q. If you ever had any conversation, or negotiations with him, you may go on in your own way and tell the Court all about it.

A. He came to my house one morning to see me about this land; I suppose he had seen Mr. Stone before—in fact, he told me he had, and Mr. Stone referred him to me; I did not talk to him very much; I never wanted to talk to him about the land—I agreed to

meet him at the hotel about 1 o'clock, and I went up there a little before that time, maybe, and there I met him and Mr. Miller and Mr. Hull; they wanted to discuss the matter with me, and I told them I wasn't in a condition to make a proposition; I never told them why I wasn't in a condition—the reason I wasn't——

Mr. MILLER: We object to that, if the Court please.

Q. Just tell what took place.

A. I told him then it was most train time, and that I was going to the train and go to Commerce, and Mr. Hull suggested that he go along with me and see Stone; I told him that it was not necessary, that it would not change the matter; so we went down and accidentally met Mr. Stone in town; we talked over the matter there in the drug store; Mr. Stone told him that he had nothing to do with the land, that I had an option on it, and he insisted upon me making him a price upon the land, and I told him no, I wasn't in a position to make a price on the land; then I think he offered me $2500.00 for the two hundred feet to go through, and I told him "No," I would not talk with him about it; then we went back to Cape Girardeau together, and I think we had another meeting that night after supper at the hotel.

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Q. Did he talk about it on the train?

A. Yes, sir; but nothing about the land or anything; I think we had a meeting that night at the hotel; he telephoned me to come up, and I went up and took Mr. Houck with me and he did not seem to recognize him, and I introduced Mr. Houck to him; then I said "I will explain to you why I would not make you a proposition on the land;" I says, "We are partners in that land, and we have an agreement that I would not make any proposition in the matter unless Mr. Houck was seen," and he made the remark, "That if he had known that, he would not have met me; that he could not expect to make a deal with Mr. Houck," and I believe I started away and he sent a man after me again, and we met at the Elk Hall, and he called me out and wanted me to make him a price on the Stone farm, and I told him I would not make a deal, unless Mr. Houck was present, and I finally agreed to go and talk to Mr. Houck again and come back and see him; I telephoned to Mr. Houck to meet me, and I came back and made him a price on the land, and he said he was not in a condition to entertain any such price; that he would go and see his people and he said he would wire me on Monday—I think it was on Friday night—he said he would not get there until after office hours, and I could hear from him Monday, and Monday I never heard anything from him.

Q. You never heard anything from him?

A. No, sir.

Q. You never?

A. No, sir.

Cross-examination.

(By Mr. MILLER:)

Q. There was a good many things happened on the 24th day of April, it was rather a busy day, wasn't it?
A. Well, I don't know.
Q. You got a deed from Mr. Stone that day?
A. Yes, sir.
Q. And from Mr. and Mrs. Finley?
A. Yes, sir; but I had the deal closed the day before.
Q. You closed it away the 2nd of April, didn't you, when you took that option?
A. I had the privilege of closing it.
Q. You had the privilege of closing it?
A. Yes, sir.
Q. You got the deed on the 24th of April?
A. Yes, sir.
Q. On the same day you conveyed to this new railroad company, didn't you?
A. I don't remember whether or not it was the same day.
Q. On that same day, this company was incorporated in Jefferson City, wasn't it?
A. I don't know.
Q. Don't you know that when you made that conveyance to the Cape Girardeau and Thebes Bridge Terminal Railroad Company, you didn't know whether or not it had been incorporated?
A. We got a telegram saying that the company was incorporated.
120 Q. You had no certificate of incorporation, when you made that deal?
A. I am not positive about that.
Q. If you had that deal on the 24th, you never had, did you?
A. I never paid attention to the date.
Q. Did Mrs. L. B. Houck sign that deed?
A. No, sir.
Q. Did your wife sign it?
A. No, sir.
Q. Neither one of the ladies signed it?
A. No, sir.
Q. You never even had incorporation papers at that time, did you?
A. I am not positive about that.
Q. When did Giboney Houck become mixed up in this transaction; when did he buy a one-third interest in this property, which was taken up afterwards?
A. Before we took the deed to the property—I don't know when it was taken up.
Q. Who wrote the deed you took to this property; in whose handwriting was it?
A. In Mr. Houck's handwriting.
Q. What Houck?

A. Louis Houck, Sr.
Q. Did you get him to write it because he was a good scribe?
A. I don't know about that.
Q. Was it because he was advisor behind this concern?
A. I don't know why he wrote it.
Q. Look at these letters of incorporation and see the date of them?
A. On the 25th of April.
Q. Then you made your deed a day before you got the articles?
A. No answer.
Q. What was all that great rush about by getting all the deeds in there in one day, before anything could be done?
A. I don't know that there was any particular rush about it, it never took but one time to do it.
Q. You picked this survey as made by those bridge people, didn't you?
A. No, sir.
Q. It it on the same land?
A. I don't know.
Q. Was it on the same two hundred feet?
A. I don't know.
Q. Do you know whether or not the right-of-way you conveyed to the Cape Girardeau and Thebes Bridge Terminal Railway Company is the same land described in this petition for condemnation?
A. Yes, sir; it is the same.
Q. How do you know it is the same?
A. The engineer told me so.
Q. Is that all the way you know?
A. Yes, sir.
Q. Were you there when he surveyed it?
A. No, sir.
Q. Then you have the engineer's word for it?
A. Yes, sir.
Q. And he says it is the same?
A. Yes, sir.
Q. You wasn't along?
A. No, sir.
Q. You know his description says the same?
A. Mr. Houck was along with him, I believe.
Q. Which Mr. Houck?
A. L. B. Houck.
Q. L. B. Houck?
A. Yes, sir.

121 Q. You never told these people, when holding them off on this trade, that you was going to incorporate this property into a railroad concern?
A. No, sir.
Q. You never had anything of record until after 11:15 on the 24th of April, did you?
A. I don't remember exactly, I think the deeds show.
Q. That deed from Stone and Finley and his wife, was the

first instance of record you had in writing touching the interest in this property, wasn't it?
A. Yes, sir, it was the first I put on record.
Q. It was the first you had put on record?
A. Yes, sir.

Redirect examination.

(By Mr. HOPE:)

Q. Did you tell Mr. Koslowsky that the option you had wasn't in writing?
A. No, sir; I never.
Q. You never told him anything of that kind?
A. No, sir, I would not have misrepresented the facts, because I never told him that.
Q. Do you intend to build a line of railroad down to the approach of the bridge?
A. Yes, sir.
Q. Who is president of the Cape Girardeau and Thebes Bridge Company?
A. I am.
Q. It is in possession, and has been ever since this deed was executed to the Cape Girardeau and Thebes Bridge Terminal Railroad Company?
A. Yes, sir.

L. B. HOUCK testifies.

Direct examination.

(By Mr. HOPE:)

Q. State your name to the Court.
A. L. B. Houck.
Q. Where do you live, Mr. Houck?
A. Cape Girardeau.
Q. Do you know J. H. Crowder and Giboney Houck?
A. Yes, sir, I do.
Q. State whether or not you and Mr. Crowder and Giboney Houck have recently bought this land known as the Stone farm in Scott County.
A. Yes, sir, and paid $15,000.00 for it.
Q. From whom did you buy it?
A. From Mr. Stone, Mr. Finley and his wife.
Q. I will ask you if at the time you bought this land, whether or not there was any suit on file in the Circuit Court of Scott County to condemn that land?
A. No, sir.
Q. You knew nothing of that?
A. No, sir.
Q. Do you know Mr. Koslowsky?
A. Yes, sir; I do.

Q. Did he ever come to see you, or did you ever have any conversation with him about this land?

A. Yes, sir; I did.

122 Q. Tell in your own way what took place.

A. On my return from St. Louis, I think on the 17th of April, Mr. Crowder met me at the depot and told me that Mr. Slopkosky had been trying to secure a right-of-way over the Stone property, that we had an option on; he says I refused to do anything unless you was present, as per our understanding——

Mr. MILLER: I object to the talk between Mr. Crowder and this man.

The COURT: Proceed.

Mr. MILLER: We except.

A. He says, "Mr. Slopkosky wants to meet us at the St. Charles Hotel this evening," he says, "Can you come up there?" and I said, "Alright," so about 7 o'clock I went up, and Mr. Slopkosky was in the hotel office; although I had the pleasure of meeting Mr. Slopkosky once before; he never remembered me, and Mr. Crowder introduced me, and said, "The reason I would not make you a price, or do any business about the right-of-way, because Mr. Houck has an interest in this option that I have, and I did not feel like doing anything unless he was present." Mr. Slopkosky looked very much surprised about it, and invited us to his room, and we went up there, and I privately spoke to Mr. Slopkosky, "I understand you want to trade with us for this property," and I says, "Now, I would like to know who you represent," and he says, "I represent the Southern Illinois and Missouri Bridge Company," and I says, "You do," and he said, "Yes." When I asked him whether or not they were incorporated, and he said, "Yes, we are incorporated," and I said, "How?" and he said in the State of Illinois; then I asked him the direct question, "Are you incorporated in the State of Missouri?" and he says, "We have articles to do business in the State," then I said "I understand that you made an offer to Mr. Crowder of $2500.00 for that right of way over the lands we have an option on," and I says that is, "mere bagatelle; we would not entertain that proposition for a minute, and he says, "Well, if I had known that you was a party to this option, or had any interest in this, I would not had anything to do with it," and I says, "I never asked your opinion on it."

Q. That was the last conversation you had with him about it?

A. No, sir.

Cross-examination.

(By Mr. MILLER:)

Q. Mr. Houck, your name does not appear on that written option, does it?

A. No, sir.

Q. You are simply an outsider?

A. Yes, sir.

Q. An agreement of honor, very binding?

A. Yes, sir; I consider his word as good as his bond.

Q. You got this deed on the 24th day of April, didn't you?
A. I presume that is what the deed says.
Q. Were you there that day?
A. No, sir.
Q. When did you draw your check for $5,000.00; in the morning before Mr. Crowder went to Benton?
A. No, sir, the evening before, and the next morning Mr. Crowder took the check.
123 Q. Several days before that you saw the Southern Illinois and Missouri Bridge Company people sounding on the right of way, didn't you?
A. I saw them sounding across the river.
Q. On this right-of-way?
A. I never considered it a right-of-way; the hill looked like a graveyard from the way they had stakes in there.
Q. It looked that way before that?
A. No, sir.
Q. You knew where the location was, didn't you?
A. No, sir.
Q. You ordered them off the land, didn't you?
A. Yes, sir.
Q. When was it?
A. I presume it was about the 18th or 20th.
Q. Why did you do that; you never had any interest in that, did you?
A. No, sir, I had an interest with Mr. Crowder in his option.
Q. You had a verbal understanding with him?
A. Yes, sir.

Redirect examination.

(By Mr. HOPE:)

Q. Is it not a fact that this Stone land was afterwards bought by the Cape Girardeau and Thebes Bridge Terminal Railway Company?
A. Yes, sir.
Q. State what you know about the incorporation of this company and the purchase of this land.
A. The company was organized under the laws of the State of Missouri; our articles of association was forwarded to the Secretary of State to get a certificate just as soon as they were forwarded, I got a telegram when they were filed from the Secretary of State, stating they were filed at a certain time.

Mr. MILLER: We object to that, if the court please; the certificate shows when it was filed——

A. —and furthermore, we had a representative in Jefferson City, who saw the paper filed; who saw the paper filed, and also wired us that the papers had been filed——

Mr. MILLER: We object to this, if the court please.

Q. What is the name of that Company?

A. Cape Girardeau and Thebes Bridge Terminal Railway Company.

Recross-examination.

By Mr. MILLER: You and Mr. Crowder have no interest in that bridge yet, have you?

A. No, sir; we tried to get an interest in the bridge; we had our agents trying to get an interest in that bridge; we offered to put up $500,000.00 to get an interest in the bridge.

Q. Have you got an interest in the bridge?

A. No, sir; not yet.

Q. You simply have some faint hopes?

A. Yes, sir.

Mr. ANGIER, being recalled, testifies:

124 Direct examination.

By Mr. MILLER: When was this approach to the bridge definitely located by you, and staked out?

A. Early in February of this year.

Q. When was the *sight* of the bridge determined upon?

A. The *sight* of the bridge was determined definitely sometime in December, last year.

Q. That time up until this time you have been occupying this strip of land making soundings?

A. Yes, sir.

L. B. HOUCK being recalled, testifies:

Direct examination.

By Mr. HOPE: State whether or not the Cape Girardeau and Thebes Bridge Terminal Railway Company has made any survey of its location for its railroad?

A. Yes, sir; the survey was made by Chief Engineer Brooks; locating the railroad, staking it and marking it upon the trees; and the deed was filed and the blazing of the trees was made a part of the record.

Q. Did the engineer make the survey?

A. Yes, sir; and made a plat and the same was recorded on the 25th day of April.

Q. Made a survey and plat the next day after acquiring the land from Stone and Finley?

A. Yes, sir; as soon as he could survey and get up our records.

Q. Where did you file it?

A. In the Circuit Clerk's office of Scott County.

Q. In making this survey, how near did you come to the river?

A. We started from a certain point on the banks of the Mississippi River, designated by Station 0.

Q. Did you make the survey right here on the river bank?

A. We started from right here and run a line straight to the hill on our land; then we run up and over the hill; the chief engineer

selected the route, which was more adaptable to the road going to be built by the Cape Girardeau and Thebes Terminal Railway Co.

Q. What does this represent?

A. I suppose it would represent woods—timber, guess it does.

Q. Now, where does the Cotton Belt run here?

A. The Cotton Belt goes away back here; the Cotton Belt is two miles from our land.

Q. How near the river does the Cotton Belt come?

A. It comes to the river now at Gray's Point.

Q. Is it up or down the river?

A. Up the river.

Q. They have no bridge there?

A. No, sir.

Q. The Cotton Belt runs to the river?

A. Yes, sir.

Q. Can you tell why it is that the approaches have to extend three-quarters of a mile from the river?

A. It is unusual that they do; the bridges are considered from bank to bank, and the terminals are connecting lines to the bridge.

125 Q. There is a cut here, is there? (Counsel indicates.)

A. Yes, sir; there is a cut there in our property; and in the right of way we desire, there is a cut of forty-five feet.

Q. Do you know whether or not the railroad company makes the cut, or does the bridge make it?

A. The railroad company, I guess, because to build a bridge you would not have to have a cut.

Cross-examination.

By Mr. MILLER: Are you an expert on bridge building?

A. No, sir.

Q. Are you a civil engineer?

A. No, sir.

Q. You don't know what it takes to construct a bridge across the river?

A. Yes, sir; it requires steel girders——

Q. And wires?

A. Yes, sir.

Q. The engineer is mistaken when he says this right of way is necessary for the approach?

A. Yes, sir; ought to build a railroad to it.

Q. In surveying, you took the stakes made by the Southern Illinois and Missouri Bridge Company, and took the same route, didn't you?

A. No, sir; we took the best available means.

Q. Did you get away from the route staked by the Southern Illinois and Missouri Bridge Company?

A. Yes, sir.

Q. Simply just a few inches?

A. Yes, sir; we took the very best route.

Q. Don't you always select the very best route?

A. I don't know.

Q. Didn't you select the route they did?
A. I examined the record at Benton.
Q. Why didn't you answer my question, didn't you select the route they had?
A. I don't know whether or not it was the same route they had.
Q. Didn't you see stakes there?
A. I saw stakes there, that made it look like a graveyard.
Q. Didn't you keep the same ground that these stakes took there?
A. No, sir.
Q. Then, you tell the court you never adopted the same ground that these people adopted?
A. I say that I never adopted the ground that they filed on record.
Q. Is the ground you surveyed the same ground they adopted?
A. I don't know what they determined on using.

GIBONEY HOUCK testifies:

Direct examination.

By Mr. HOPE: State your name to the court?
A. Giboney Houck.
Q. Where do you reside?
A. Cape Girardeau.
Q. You are one of the attorneys for the defense in this case, are you?
A. Yes, sir.

126 Q. I will ask you whether or not defendants' attorneys have is their possession the deeds, certified copies of which were introduced in evidence; being deeds from Finley and wife, and Stone to Crowder, Louis B. Houck and yourself, and then the deeds from Mr. Crowder, yourself and L. B. Houck to the Cape Girardeau and Thebes Bridge Terminal Railway Company?
A. The originals were in our possession, but we turned them over to the Recorder of Deeds of Scott County to be filed and recorded.
Q. Have you made any effort to get those deeds for use in this trial?
A. Yes, sir; on last Saturday I asked the Recorder for deeds, and he said he had not finished recording them; that he had one recorded, but he had not compared them.
Q. You failed to get the deeds?
A. Yes, sir.
Q. Is that why we have not got them here for this trial?
A. Yes, sir.

Cross-examination.

Mr. MILLER: You placed these deeds there at the Recorder's office?
A. Yes, sir.
Q. Did you try to borrow them for use in this trial?
A. No, sir.
Q. You never asked the clerk to let you have them?
A. I asked him if he had them recorded.

Q. I will ask you if that record does not say that it was recorded in book 44, page 36; why did you not bring the original?
A. He had perhaps one recorded, but he never compared them.
Q. How long did it take to compare them?
A. I never had time.
Q. Oh, you could not spare the time?
A. It was on Saturday.
Q. This is the deed from Finley and Stone to you three gentlemen?
A. Yes, sir.
Q. It was recorded in book 44, and yet you did not bring the original deed with you; now, didn't you leave it there, because that deed was in your father's handwriting?
A. No, sir.
Q. And didn't care to exhibit it here?
A. No, sir.
Q. It is in your father's handwriting, isn't it?
A. I don't know.
Q. Didn't you ever see it?
A. Yes, sir.
Q. In whose handwriting is it?
A. I don't know.
Q. Don't you remember that deed was written between 11 and 12 o'clock at night on the evening of the 23rd of April?
A. Between what time?
Q. Between 11 and 12 o'clock at night?
A. No, sir; I think I was at home at that time.
Q. Do you know where your father was on the 23rd of April?
A. Yes, sir—I am not sure—he was either in St. Louis,
127 or in town on his way to St. Louis—fixing to start out the next morning.

The COURT: Stand aside; who is next?
Mr. HOPE: This is the defendants' case.
Mr. MILLER: This is the plaintiff's case, if the court please.
Whereupon the court found the issues for the defendants, and entered up judgment dismissing plaintiff's petition and judgment against the plaintiff for costs.
And, thereupon, immediately during the sitting of said Dunklin County Circuit Court and within four (4) days after the rendition of the judgment as above, plaintiff filed its motion for a new trial.
[NOTE: This motion is hereinbefore set out in full and for that reason is omitted here.]
Which motion, being seen and heard by the court, was by the court overruled. To which action of the court in overruling said motion the plaintiff at the time objected and excepted.
And thereupon, immediately, plaintiff tendered its affidavit and bond praying an appeal to the Supreme Court of the State of Missouri, which bond was approved and appeal granted.
And, thereupon, by order of the court entered of record and consent of counsel, plaintiff was given ninety (90) days in which to perfect its bill of exceptions.

And now, within the time so limited, comes the plaintiff and presents this, its bill of exceptions, and prays the same may be signed, sealed, filed and made a part of the record herein.

Which is done accordingly, this 17th day of June, 1902.

J. L. FORT,
Judge of the Dunklin County Circuit Court.

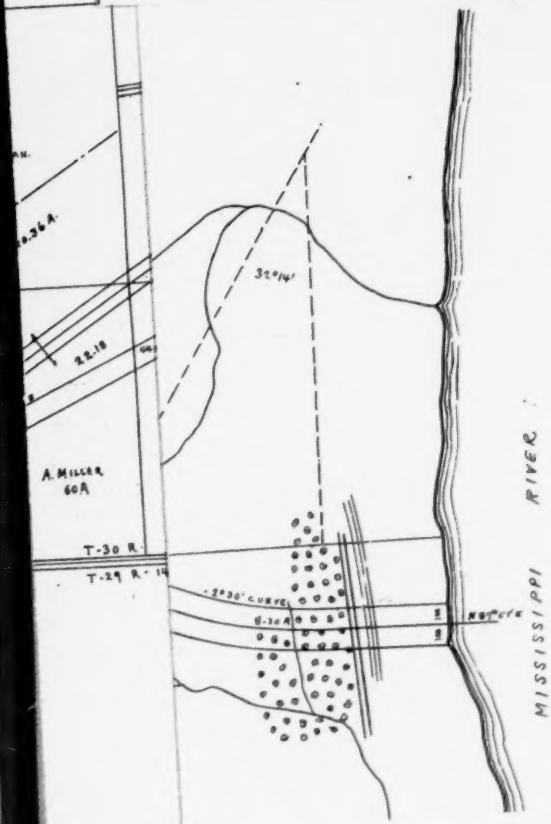
Respectfully submitted,

W. H. MILLER,
WILSON CRAMER,
M. L. CLARDY,
S. H. WEST,
Attorneys for Appellant.

Mr. SMITH: With the permission of the counsel for the other side, I now offer the map of the group used yesterday in the examination of the witnesses, and also the profile map and also the topographical map and make them exhibits one, two and three.

(Here follow maps marked pp. 128, 129 & 130.)

FOLD OUT IS TOO LARGE TO BE FILMED



131 The COURT: Very well. What is next?
Mr. SMITH: This is our case, if the court please.

Plaintiff's Evidence.

The plaintiffs, the Southern Illinois and Missouri Bridge Company to sustain the issues on their part offer evidence as follows:

Mr. MILLER: We desire to offer first, if the court please, the petition in the case of the Southern Illinois and Missouri Bridge Company *v.* Robert G. Stone *et al.*, together with the file marks endorsed thereon by the Circuit Clerk of Scott County, which is as follows:

Mr. SMITH: We ask now that this petition be excluded for the following reasons, because it is irrelevant, immaterial and incompetent, and does not tend to prove any issue in this case, unless it be an issue of law for the decision of the court; second, because the petition discloses upon its face, taken in connection with the charter and the Act of Congress, that the court has no power to deal with the land, subject matter of the petition, lying west of the approach proper, as fixed by the Secretary of War, which is 720 feet; and that part of the subject matter over which the court has no jurisdiction, being about 3,800 feet.

The COURT: Objection overruled.

Mr. SMITH: To the action of the court in overruling objections exceptors excepted at the time.

Petition was read as appears on page 2. File marks thereon were read as shown on page 112.

Mr. MILLER: We offer next, if the court please, a certified copy of a general warranty deed from R. M. Finley and Mrs. Finley, and R. G. Stone to John H. Crowder, Louis B. Houck and Giboney Houck, dated April 24, 1902, and recorded on the 24th of April, 1902, at 11 o'clock and 15 minutes a. m., in Book 44, page 636, of the land records of Scott County.

Mr. SMITH: Now, if the court please, we object to this testimony as irrelevant, immaterial and incompetent, and does not tend to prove any issue in this case. The Terminal Railway Company asked to be made a party defendant in order that it might protect its interest, and the court can not rule upon that question unless the Terminal Railroad be made a party.

The COURT: Objection overruled.

Mr. SMITH: Exceptors then and there excepted to the action of the court, in overruling their objections.

General Warranty Deed.

132 This deed, made and entered into this 24th day of April, A. D. 1902, by and between Richard M. Finley and Nannie E. Finley, his wife, and R. G. Stone, of the County of Scott, and State of Missouri, parties of the first part, and John H. Crowder, Louis B. Houck and Giboney Houck, of the County of Cape Girardeau, and State of Missouri, parties of the second part,

Witnesseth: That the said parties of the first part, in consideration of the sum of Fifteen Thousand Dollars, to them paid by the said parties of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain and sell, convey and confirm unto the said parties of the second part, their heirs and assigns, the following described lots, tracts or parcels of land, lying, being and situate in the County of Scott, and State of Missouri, to-wit:

All our right, title and interest in the so-called "Stone" farm in Town. 29, and 30, N. R., 14 East and lying and being on the Mississippi River below Manning's Landing, said farm embracing lot two (2) northeast quarter of section two (2) Town. 29, N. R., 14 East, containing ninety-nine 01-100 acres; also—

Revenue Stamp to the amount of $6.25 on this Instrument.

Southeast part of survey seven hundred and ninety-four (794) containing 136 acres, said survey being located in Town. 30, N. R., 14 East, also north-half southwest part of said survey (794) seven hundred and ninety-four, Town. 30, N. R., 14 East, containing sixty-eight 06-100 acres, it being our intention to convey and we do hereby convey all our land in said survey and said sections and in said townships and range to which we have any title whatever except, however, one acre which is now used as a graveyard and which we reserve as such from this conveyance.

To have and to hold the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging, or in anywise appertaining, unto the said parties of the second part, and unto their heirs and assigns forever; the said parties of the first part hereby covenanting that they are lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that they have good right to convey the same; that the said premises are free and clear of any incumbrance done or suffered by them or those under whom they claim, and that they will warrant and defend the title to the said premises unto the said parties of the second part and unto their heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

R. M. FINLEY. [SEAL.]
NANNIE E. FINLEY. [SEAL.]
R. G. STONE. [SEAL.]

Signed, sealed and delivered in the presence of

——— ———.

STATE OF MISSOURI, *County of Scott, ss:*

On this 24th day of April, A. D. 1902, before me personally appeared R. M. Finley and Nannie E. Finley, his wife, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

In testimony whereof, I have hereunto set my hand and
[L. S.] affixed my official seal at my office in Benton, Mo., the day and year first above written.

My term of office as a Notary Public will expire July 18th, 1904.

JAMES R. WALKER,
Notary Public.

133 STATE OF MISSOURI, *County of Scott, ss:*

On this 24th day of April, A. D. 1902, before me personally appeared R. G. Stone, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

And the said R. G. Stone further declared himself to be single and unmarried.

In testimony whereof, I have hereunto set my hand and
[L. S.] affixed my official seal at my office in Benton, Mo., the day and year above written.

My commission as Notary Public will expire on the 18th day of July, 1904.

JAMES R. WALKER,
Notary Public.

The foregoing deed was filed for record in this office, on the 24th day of April, 1902, at 11 o'clock, 15 minutes, a. m.

V. L. HARRIS,
Recorder.

STATE OF MISSOURI, *County of Scott, ss:*

I. V. L. Harris, Recorder of Deeds within and for the County of Scott, in the State of Missouri, do hereby certify that the foregoing is a full and true copy of the record of a deed of R. M. Finley and Nannie E. Finley and R. G. Stone as fully as the same appears of record in my said office, and is recorded in Scott County records, book 44, at page 636.

In testimony whereof I have hereunto set my hand and
[L. S.] affixed my official seal. Done at office in the town of Benton, this 3rd day of May, 1902.

V. L. HARRIS,
Recorder of Deeds, Scott County, Mo.

Mr. MILLER: We offer next, if the court please, the offer made on the 24th of March, 1903, by your Honor as judge of this court, sitting in vacation appointing commissioners to assess damages to the defendants, R. G. Stone, R. M. Finley and Mrs. Finley——

Mr. SMITH: We object to that, if the court please, for the f-llowing reasons, first, because the order in part is void; for the reason that the court didn't have any authority to make it with respect to that part of the 200 feet strip described in the order lying west of the 720 feet designated as the western approach of the bridge by the Secretary of War, and because it is irrelevant, immaterial and incompe-

tent, and because it does not tend to prove any issues in this case.

The COURT: Objection overruled.

Mr. SMITH: To which action of the court in overruling their objections, said Exceptors excepted at the time.

SOUTHERN ILLINOIS & MISSOURI BRIDGE COMPANY
vs.
R. G. STONE ET AL.

134 To John A. Hope, attorney of record for defendant-:

You are hereby notified, That the Southern Illinois and Missouri Bridge Company will apply to the Honorable J. L. Fort, judge of the Circuit Court of Dunklin County, Missouri, in the vacation of said court, at the City of Bloomfield, on Monday, the 23rd day of March, 1903, for the appointment of commissioners to assess the damages, if any, growing out of the appropriation of the land in the petition described; and in accordance with the direction of the Supreme Court of the State of Missouri.

WILSON CRAMER &
W. H. MILLER,
For Plaintiff.

This 20 day of March, 1903.

Received copy of the above document, this March 20th, 1903.

JOHN A. HOPE,
One of the Attorneys for Defendants.

Filed April 6, 1903.
W. P. FINCH,
Circuit Clerk.

In the Circuit Court of Dunklin County, County of Dunklin, State of Missouri, in Vacation.

No. —.

THE SOUTHERN ILLINOIS & MISSOURI BRIDGE COMPANY, Plaintiff,
vs.
ROBERT G. STONE, NANNIE E. FINLEY, and R. M. FINLEY, Her Husband, Defendants.

Order Appointing Commissioners.

Now, again, on this 24th day of March, 1903, in vacation, is presented to me, the undersigned judge of the Circuit Court of Dunklin County, Missouri, the petition of the Southern Illinois and Missouri Bridge Company alleging, among other things:

"That it is incorporated for the purpose of erecting and maintaining a bridge across the Mississippi river from a point near Thebes, in Alexander County, Illinois, to a point near Manning's

Landing, in Scott County, Missouri, with the necessary appurtenances thereto.

"That said bridge is intended as a railway bridge and it is necessary for this plaintiff to have a right of way for its railway tracks, bridge and terminal yards, etc.

"That the general direction of its yards will be westwardly from the western bank of the Mississippi River.

"That for the purpose of carrying out its charter privileges it is necessary for it to hold and to own the following described tract of land, lying and being in the County of Scott, State of Missouri, to-wit:

A part of the S. E. and S. W. parts of private survey No. 794 in tw. 30, range 14 east; and in lot 2 of the N. E. qr. of sec. 2, tw. 29, range 14 east, being a tract of land 200 ft. wide, 100 ft. on each side of the center line of the approaches to the Southern Illinois and Missouri Bridge Co., as located and platted, beginning at a point on the east line of fractional sec. 34, tw. 30, R. 14 east; and 1,240 ft. from the S. E. cor. of said frac. sec.; thence run south 70 degrees 45 minutes, east 765 feet; thence by a one degree curve to the right 980 4/10 ft.; thence south 59 degrees 45 minutes, east 924 8/10 ft.; thence by a 2 deg. 30 min. curve to the left 1,289 3/10 ft.; thence N. 87 deg. 51 min. east to the west
135 bank of the Mississippi River, said center line intersects the north line of tw. 29 100½ ft. west of the N. W. cor. of lot 2 in N. E. qr. of sec. 2, tw. 29, R. 14 east, and also intersects the west line of said lot 269 1/10 ft. south of the N. W. cor. of said lot 2.

The tract above described contains 20 3/10 acres and will appear by a blue print hereto attached and made a part of this petition.

"That the defendants herein, together with R. M. Finley, the husband of one of the defendants, are the owners of said real estate.

"That defendants Heldt, Miller and Bates, are tenants, having growing crops on different portions of said real estate for the purpose designated.

"That your petitioner has endeavored to agree with defendants and each of them, upon the price to pay for said property, but has been unable to amicably settle or to agree at all upon a proper compensation to either of the parties defendant.

"That said real estate is necessary for the laying of tracks and the handling of business over and across plaintiff's bridge."

And praying for the appointment of commissioners under the provisions of the statutes in such cases made and approved.

And it appearing to me that due notice of the presentation of said petition at this time has been given to the defendants therein named, it is by me ordered, in obedience to the mandate issued in this cause by the Supreme Court of the State of Missouri, that A. J. Matthews, of Sikeston, Alexander Wright, of Oran and Frank Anderson, of Commerce, three disinterested householders of Scott County, Missouri, be and they are hereby appointed as commissioners to ascertain and assess the damages which the said defendants, Robert G. Stone, Nannie E. Finley and R. M. Finley, as the owners

in fee, and David Heldt, Burchardt Miller and Perry Bates, as occupying tenants, will severally sustain by reason of the taking and appropriation of the premises above described for the use and purposes of said Bridge Company as hereinbefore set out.

And it is further ordered that said A. J. Matthews, Alexander Wright and Frank Anderson, after qualifying by taking and subscribing an oath faithfully to discharge their duties as such commissioners, proceed at the- earliest convenience to discharge their duties in that behalf and make report in writing of their proceedings to the Clerk of the Circuit Court of Dunklin County, Missouri.

In witness whereof, I have hereunto subscribed by name as judge of the Circuit Court of Dunklin County, Missouri, in the v-cation thereof.

J. L. FORT,
Judge Dunklin County Circuit Court.

In the Circuit Court, Dunklin County, Missouri, in the Vacation Thereof.

No. —.

SOUTHERN ILLINOIS AND MISSOURI BRIDGE COMPANY, Plaintiff,
vs.
R. G. STONE, NANNIE E. FINLEY, and R. M. FINLEY, Her Husband, Defendants.

Oath of Commissioners.

STATE OF MISSOURI, *County of Scott, ss:*

136 A. J. Matthews, Alexander Wright and Frank Anderson make oath and say that they are disinterested freeholders of the County of Scott in the State of Missouri that *we* will honestly, faithfully and impartially discharge their duties as Commissioners in the matter of assessing damages in this case of the Southern Illinois and Missouri Bridge Company against R. G. Stone, Nannie E. Finley and Robert M. Finley, her husband, Burchardt Miller, Perry Bates and David Heldt to the best of their ability.

A. J. MATTHEWS.
ALEX. WRIGHT.
FRANK ANDERSON.

Subscribed and sworn to before me this 31st day of March, 1903.

R. A. KINGSBURY,
Clerk Probate Court, Scott Co., Mo.

Report of Commissioners.

We, the undersigned, commissioners appointed by the Honorable, the Circuit Court of Dunklin County, Missouri, on the 24th day of March, 1903, to assess the damages, if any, which the said

R. G. Stone, Nannie E. Finley and R. M. Finley, her husband, may sustain as owners, and Burchardt Miller, Perry Bates and David Heldt as tenants, of the following described real estate situated in the County of Scott and State of Missouri, by reason of the appropriation of the same for an approach, yards and terminals for said Southern Illinois and Missouri Bridge Company, to-wit:

A part of the S. E. and S. W. parts of private survey No. 794, in tw. 30, range 14 east, and in lot 2 of the N. E. qr. of sec. 2, tw. 29, range 14 east, being a tract of land 200 ft. wide, 100 ft. on each side of the center line of the approaches to the Southern Illinois and Missouri Bridge Co., as located and platted, beginning at a point on the east line of fractional sec. 34, tw. 30, R. 14 east, and 1240 ft. from the S. E. cor. of said frac. sec., thence run south 70 degrees 45 minutes east, 765 feet, thence by one degree curve to the right 980 4/10 ft.; thence south 59 degrees 45 minutes east, 924 8/10 ft.; thence by a 2 degrees 30 minutes curve to the left 1289 3/10 ft.; thence N. 87 degrees 51 minutes east, to the west bank of the Mississippi River; said center line intersects the north line of tw. 29 100½ ft. west of the N. W. cor. of lot 2 in the N. E. qr. of sec. 2, tw. 29, R. 14 east, and also intersects the west line of said lot 2699 1/10 ft. south of the N. W. cor. of said lot 2. The tract containing 20 3/10 acres which appear by blue print attached to the petition.

After first taking the oath required by law (which is hereto attached and made a part of this report), and first having notified the parties in interest of the time and place when and where we would meet to assess the damages, did go upon and view the premises heretobefore described and likewise described in the petition and order of court appointing us, on the 31st day of March, 1903, and examined the claims of the parties in interest, all of said commissioners being present and acting, did determine and ascertain the compensation which ought justly to be paid said R. G. Stone, Nannie E. Finley and R. M. Finley, her husband, for use and appropriation of said property as described. We certify and report that the damages sustained are as follows:

To R. G. Stone.....Dollars.
To Nannie E. Finley and
R. M. Finley her husband.....Dollars.
Or, jointly $8,120.00 Dollars.

137 We, the undersigned commissioners do hereby return this our report of said assessment of damages aforesaid under oath to the clerk of the Circuit Court of Dunklin County, Missouri, this — day of ——, 1903.

A. J. MATTHEWS.
ALEXANDER WRIGHT.
FRANK ANDERSON.

STATE OF MISSOURI, *County of Scott, ss:*

We, A. J. Matthews, Frank Anderson and Alexander Wright, make oath and say that we are disinterested freeholders of the County of Scott and State of Missouri; that the foregoing report of the assessment of damages contains a true account of our proceedings as such commissioners appointed for that purpose; that our award of damages was made fairly and impartially upon the premises embraced in said return, etc.

A. J. MATTHEWS.
ALEXANDER WRIGHT.
FRANK ANDERSON.

Subscribed and sworn to before me this 3rd day of April, 1903.

R. A. KINGSBURY,
Clerk Probate Court, Scott Co., Mo.

W. E. ANGIER, being recalled on behalf of the Bridge Company, testifies as follows:

Direct examination.

By Mr. MILLER: Mr. Angier, you stated yesterday when testifying that the land known as the Stone land had a frontage of about 3,800 feet on the river, if I remember you correctly?

A. Yes, sir.

Q. I will ask you whether or not you have in your possession a plat of the Stone land?

A. Yes, sir.

Q. Witness is now shown the profile—the topographical map marked by the stenographer as exhibit 3, and is asked to state whether or not there is anything on this map indicating the boundaries of the Stone land, and if so, state what it is?

A. The boundaries of the Stone property are indicated by the red tinting on this blue print, and on the other part is bounded by the red tinting.

Q. How many acres in that Stone farm?

A. There is a trifle over 300 acres.

Q. A little over 300 acres?

A. Yes, sir.

Q. If there is anything on this plat, which I have now shown you indicating the strip of land to be used for the bridge approach on the Stone land, state what it is?

A. The land to be used for the bridge approach is shown by this line down here (indicating)—this land down here that is tinted around the edges shows the right of way 200 feet wide from here (indicating) out to the bank of the river.

Q. There has been no change since it was presented yesterday?

A. No, sir; not as far as I know.

Q. Examine it and see?

A. All right.

Q. You made it?

A. Yes, sir.

Q. Examine it and see if there has been any change at
138 all?

A. No, sir.

Q. Who made that map?

A. It was made in my office by one of my assistants.

Q. Now, then, Mr. Angier, state to the court, if you can, how much of the Stone farm lies north of this contemplated approach, and how much of it lies south?

A. About two-thirds to the north, and about one-third to the south.

Q. How much of survey 794 lies north of the contemplated approach?

A. Nearly the whole of it—I should say five-sixths.

Q. Five-sixths?

A. Yes, sir.

Q. How much of survey 794 lies below?

A. The other one-sixth.

Q. The other one-sixth?

A. Yes, sir.

Q. Does any part of lot two of section lie north of the contemplated approach?

A. Yes, sir.

Q. How much?

A. I should think from a sixth to an eighth.

Q. From a sixth to an eighth?

A. Yes, sir.

Q. And the rest below?

A. Yes, sir; to the south of it.

Q. Mr. Angier, I believe you stated that the piers of the bridge are numbered?

A. Yes, sir.

Q. I will ask you where the western pier of the bridge is situated—whether or not it is on the shore or in the water at low water stage?

A. At low water stage it is on the shore, but ordinary stages it is in the water.

Q. At ordinary stages it is in the water?

A. Yes, sir.

Q. How far from the shore at ordinary stages?

A. From about fifty to seventy feet.

Q. How far from this pier is it to the next pier as you go westward in the concrete approach?

A. I can not tell you exactly—about 120 or 130 feet—we have a hundred foot arch in between.

Q. If there is any other arch there after that, state the width of that?

A. There are sixty foot arches with the piers in between.

Q. Is there any kind of earth work between the bluff and the pier you say at ordinary water stages stands in the water?

A. Yes, sir.

Q. Earth work?

A. Yes, sir.

Q. Where?

A. At the end of the arches in the bottom, there is about a hundred or one hundred and fifty feet of embankment to bring it up from the bluff.

Q. Is there any earth work or embankment at the foot of the bluff between the bluff and the arch that stands in the water?

A. No, sir.

Q. What is the character of the ground both above and
139 below this bridge site, between the pier, which stands in the water at ordinary water mark and the bluff?

A. It is flat cultivated ground between the river bank and along the edge of the bluff, and at the foot of the bluff is the Gulf railway, and just west of that comes a highway, and then go up the slope towards the top of the bluff.

Q. State why it is, if you know, that this space between the western pier, which is in the water at ordinary stages, and the bluff is arched?

A. Because it is considered more satisfactory to put in arches with iron superstructure work; they did not want to contract the water way.

Q. Will there be anything to obstruct the free passage from that portion of the Stone farm lying south and north of the approach?

A. No, sir; nothing except the fences.

Q. What right of way?

A. The bridge right of way.

Q. I mean under the bridge?

A. I know that—we fence what right of way we buy.

Q. Nothing except the fences?

A. No, sir.

Q. Now, I will ask you to state to the jury what the character of the ground is on each side of this strip of ground sought to be taken for bridge purposes, after you get on to the ridge or bluff?

A. It is partially hills and woods—it is a very rough country—partially cultivated—the level tops are cultivated, and the side of the hills and valleys are covered with timber.

Q. Is there any public road there leading in any direction from the northern portion of the Stone farm, or that portion of the Stone farm, which lies north of this bridge approach?

A. Yes, sir.

Q. Where is that?

A. There is one along the foot of the bluff, and one up through the woods crossing under the approach about half way back here (indicating).

Q. Are those roads on the Stone land?

A. They are on the line fences—part of the way on the Stone land and part of the way on the adjoining land.

Q. Are those public roads?

A. I think both are.

Q. You think both are?

A. Yes, sir.

Q. I will ask you whether or not either of these roads are accessible from either portion of the farm to the other?

A. Yes, sir.

Q. Both of them are accessible from that portion that lies north or south of the approach?

A. Yes, sir.

Q. Do you know how much of this farm is in cultivation?

A. No, sir; I don't.

Q. Can you approximate it?

A. I should say roughly about one-half.

Q. About one-half?

A. Yes, sir.

Q. Where is that cultivated portion?

A. Both in the land along the river — on top of the hills.

Q. What is the character of those hills as to their adaptability to farming and cultivation?

A. They are quite steep and covered with timber—I don't
140 think they have ever been cultivated.

Q. How high is the point on the bluff where the bridge strikes the bluff above low water mark?

A. 110 feet.

Q. 110 feet?

A. Yes, sir; the elevation of the track of the bridge is 410 feet and low water is 300.

Q. The rail would be how high above low water mark?

A. 110 feet?

Q. 110 feet?

A. Yes, sir.

Q. How high are the rails above the level of that space lying between the river and the bluff?

A. From sixty to seventy feet—it slopes up gradually to the west.

Q. I am asking about the perpendicular height?

A. I say it is from sixty to seventy feet; the ground slopes up gradually as you go to the bluff.

Q. How far, Mr. Angier, is it from the point where you strike the Stone land until you leave it?

A. 4,500 feet.

Q. 4,500 feet?

A. Yes, sir.

Q. Showing the witness a plat, which has been marked by the stenographer as exhibit 1, he is asked to state what the green coloring indicates upon this map?

A. It indicates property purchased and to be used for the bridge approaches and yards and owned by the Southern Illinois and Missouri Bridge Company.

Q. How far is it from the river to where the bridge strikes the Cotton Belt Railroad—this point right here, indicates it?

A. It is about 12,000 feet to where we first strike it.

Q. What point on the map?

A. This point right here.

Q. Tell him what it is—he don't know?

A. It would be from 200 to 300 feet from the west line of A. Miller's property.

Q. Is there any mark upon this map indicating that, if so, I will get you to give the mark?

A. The boundary of the Miller land is shown here, and I say from 200 to 300 feet in here would be the connection.

Q. Now, Mr. Angier, I will get you to tell the jury, what, if any, is the difference in the elevation between the point where the bridge strikes the bluff and the point where it strikes the Cotton Belt Railroad?

A. From fifty to sixty feet,—about fifty-five feet.

Q. Which is the highest?

A. The bridge line is the highest.

Q. The bridge line is the highest?

A. Yes, sir.

Q. Now, Mr. Angier, I will ask you what the grade is from that point where the bridge strikes the bluff down to where the bridge connects with the Cotton Belt?

A. It is what we call one-half per cent. grade—or six inches to the 100 feet.

Q. I will ask you as an engineer whether or not this ele-
141 vation at which the bridge strikes the bluff could be reached satisfactorily or properly in a shorter distance?

A. No, sir; it could not.

Q. It could not?

A. No, sir.

Q. Why is it, you may tell the jury, if you know, that 200 feet is required?

A. It is on account of the depth of the cuts, and the side slopes adopted—in order to have all slopes inside of the right of way, we purchased 200 feet.

Q. Has the elevation anything to do with the width?

A. Yes, sir; the depth of the cuts have.

Q. You say you have for years engaged in bridge work as an engineer?

A. Yes, sir.

Q. I will ask you to state to the jury what constitutes the approach to a bridge?

A. Why, it is generally from wherever we consider to connect to it—from wherever we start to get to it to connect with any other place. The approach to a bridge is the means of getting on the bridge from whatever we connect with.

Q. What point would you seek in starting in this case?

A. In any case it would be any railroad line or any railroad approach that we was connecting with.

Q. I believe you stated that you connected with the Cotton Belt Railroad?

A. Yes, sir.

Q. At what point in this grade, if you know?

A. We hit them accidentally just at their grade—the grade at the end of our approach just comes to the end of their grade—they are coming up grade at that place—we hit them at the top of the hill.

Q. You strike the Cotton Belt on the top of a ridge?

A. Yes, sir.

Q. You say you strike them on the top of a ridge?

A. Yes, sir.

Q. Now, from that point where you strike the Cotton Belt on this hill or summit, what is the grade towards the bridge?

A. The grade from there up on a straight line is six inches to the 100 feet.

Q. Up grade all the way?

A. Yes, sir.

By Mr. MILLER: Mr. Angier, in answer to Mr. Smith's question this morning, you said that the estimated cost of the bridge was $2,600,000?

A. Yes, sir; about two and one-half million, or two million and six hundred thousand dollars.

Q. That does not include any equipments for the rolling stock, or anything of the kind?

A. No, sir.

Q. You know nothing about what they cost?

A. No, sir; and it does not include the purchasing of the right of way outside.

Q. It is the naked construction?

A. Yes, sir.

Q. That is all.

Cross-examination:

142 By Mr. SMITH: Mr. Angier, didn't you testify awhile ago that you had been in the bridge work for sometime?

A. Yes, sir.

Q. Have you ever been located in the City of St. Louis?

A. No, sir.

Q. Do you know anything about the Eads Bridge?

A. Why, I have been over it several times—very frequently.

Q. Do you know anything about the Merchants' Terminal?

A. No, sir.

Q. Do you know that the Terminal Association of St. Louis on the Missouri side and the Wiggins Ferry Company on the Illinois side own all the Terminals of the Eads Bridge?

A. No, sir; I don't know anything about it——

Q. And that the Bridge Company simply owns the bridge?

A. No, sir; I don't know anything about it—my understanding is that the Terminal Railroad Association owned the whole thing.

Q. Do you know that the Terminal Railroad Association of St. Louis owns all the Terminals on the Missouri side?

A. I think they own all the terminals in Illinois, Missouri and the Union Depot.

Q. You stated awhile ago, Mr. Angier, that usually the approach to a bridge was from the railroad sought to be connected with, was the approach to the bridge?

A. We consider the approaches from where we are connecting with the roads we are building to; at Memphis we build through to the I. M. & K. C.

Q. I will ask you, if the Gulf does not own the bridge in Memphis?

A. No, sir; it is a separate corporation.

Q. So, then, if the Bridge Company was running a railroad out to the I. M. in order that the I. M. could get on to the bridge, the approach would extend to the I. M., fifteen miles?

A. No, sir; I don't think the Bridge Company would build that far.

Q. If they can build a railroad three miles out in the country, what would hinder them from building a railroad ten or fifteen miles in the country?

A. I don't think it would be advisable for them to build it that far.

Q. Isn't there a pool formed by this Bridge Company among certain railroad companies not to allow any other railroad to own the tracks to that approach?

A. If one railroad built in there, it would have control of the situation, and by the bridge building out it would have control of the situation, and any other railroad could build in there to it.

Q. You say that all the railroads interested in that bridge could have the same benefits?

A. Yes, sir.

Q. And keep out any other railroad?

A. No, sir; I have just told you that by building out, it would give any other railroad a chance to connect.

Q. The purpose is to keep them out?

A. No, sir.

Q. Then, why not let the Cotton Belt build into the
143 bridge?

A. Because no other road would have any chance to connect with it.

Q. The Cotton Belt and Iron Mountain are using the same tracks to St. Louis?

A. Yes, sir.

Q. And also the Valley road tracks?

A. Yes, sir; that is a very common proceeding.

Q. Now, would not it be just as reasonable for one railroad to use the tracks of another railroad leading to the bridge?

A. No, sir.

Q. Why?

A. Because it takes control of the bridge out of the Bridge Company's hands.

Q. You want to put it in the hands of a pool of the big railroads?

A. No, sir.

Q. And permit them to control this bridge against all other railroads, now, isn't that true, Mr. Angier?

A. No, sir.

Q. Now, I will ask you in this connection, if the engineers of your company, after the beginning of this suit, did not consult on the proposition as to making a change in the location of your bridge, with the view of getting off of the Stone land?

A. Nothing to my knowledge.

Q. Do you know anything about that kind of an arrangement?

A. No, sir.

Q. And the reason why you did not do it was the one you have just given?

A. No, sir.

Q. And you do state now, that the reason why the Cotton Belt wasn't permitted to build this railroad to this bridge was because it would have superior advantages over these railroads?

A. I said it wasn't considered, but if we had allowed it, it would have control of this bridge.

Q. Didn't you say that other railroads could pass over it?

A. Yes, sir; they might.

Q. Tell the jury why it was that Mr. Lynch, chief engineer of this bridge, fixed the approach at 13,400 feet?

A. I suppose he thought it was a good approach.

Q. Didn't you testify awhile ago that the approach always was the distance between the bridge and the first railroad you came to?

A. Yes, but Mr. Lynch, in order to economize, he carried his grade along further.

Q. So economics enters into the length of the approach?

A. Yes, sir.

Q. You did not agree with him?

A. No, sir.

Q. What would the approach be, if the Cotton Belt wasn't there?

A. I cannot answer that—it is a hypothetical question.

Q. What would be the approach, if the Cotton Belt railroad was not there?

A. I cannot answer any question of that kind.

Q. Then, if there was no railroad there, there would not have been any approach?

A. If there wasn't no railroad, the bridge would not have been built there.

144 Q. Then, the approach is fixed by the railroad?

A. The approach is fixed by the association of railroads, and by railroads.

Q. Tell the jury how the C. & E. I. runs over in Illinois?

A. They have about four miles of that approach——

Q. I am asking how the C. & E. I. runs?

A. On the river bank up to Gale back through the hills and over the hills and get on the approach on the north and east.

Q. Hasn't a new company been formed and bought up those approaches?

A. No, sir.

Q. Don't you know there is a company now organized for that purpose?

A. No, sir.

Q. And you say that the Bridge Company can own any number of miles of approaches that it pleases and operate a railroad thereon, and call it an approach, and because it is called an approach to the bridge; therefore it is an approach?

A. They can build any number of miles, which is necessary for them to use in operating the bridge.

Q. Who is to own the rolling stock of this bridge?

A. I don't know—I don't know that the question has ever been considered or settled—I don't know whether or not it is settled.

Q. What do you know about it?

A. I don't know anything about it.

Q. Is the railroad going to operate the rolling stock?

A. I don't know.

Q. Your charter says you are to provide a bridge, but it does not say anything about rolling stock?

A. It is used different in different localities.

Q. Your company does not pay much attention to its charter, does it?

A. The fact is I am constructing it and not operating it.

Q. I will ask you whether or not any railroads go over the approach to the Memphis bridge?

A. Yes, sir.

Q. What railroads?

A. The I. M. goes over it now and the Choctaw uses it for passenger and freight trains.

Q. All the railroads that cross the Eads Bridge in St. Louis, transfer, don't they, on the Terminal Railroad Association approaches?

A. If they own the Eads approach, we have no information to that effect.

Q. Don't you know that these various railroads don't have anything to say about it?

A. I don't know.

Mr. MILLER: We object to that, if the court please.

Q. What other bridge besides this bridge that you know of owned by the railroads that run across it, and the approaches?

A. They own all the bridges and approaches that are operated.

Q. You are sure of that?

A. Sometimes they are owned by bridge companies.

145 Q. I thought you said they owned them all?

A. The bridge companies own them and operate them——

Q. What railroads own this Bridge Company?

A. I don't know that.

Q. Didn't you testify yesterday that the directors and officers of these various railroad companies were officers and directors of this Bridge Company?

A. Well, but it does not follow that they are railroad owners.

Q. Mr. Angier, I believe under the Act of Congress, and perhaps your charter that the tolls for crossing that bridge are to be fixed by the Secretary of War?

A. It may be.

Q. What do you mean by it may be fixed?

A. If he cares to exercise jurisdiction, he has a right to.

Q. Do you mean to say that he will not exercise his jurisdiction?

Mr. MILLER: We object to that, if the court please.

Q. I will ask you whether or not the Act of Congress says he may or shall?

Mr. MILLER: We object, because the Act of Congress speaks for itself.

The COURT: Proceed.

Mr. MILLER: We except.

Q. I will ask you whether or not the Act of Congress says he may or shall?

A. How is that?

Q. Does the Act of Congress say that he may or shall—answer my question?

A. It is the case on all other bridges, which has done business.

Q. Are you general supervisor of all bridges?

Mr. MILLER: We object to the counsel abusing the witness, and because it has nothing to do with the case.

The COURT: The objection will be sustained as far as the abusing of the witness is concerned.

Q. You think the Secretary of War may fix the tolls across the bridge and the approaches thereto?

A. Yes, sir.

Q. And the Secretary of War may fix the tolls over the Terminal Railroads operating them?

A. I think the Act and Charter states he shall have jurisdiction over all tracks they own.

Q. Do you say the Act and Charter provides that he may have supervision over all the tracks of the Terminal Railroads, is that the way it reads?

A. That is my recollection of it.

Q. Don't you know that the Act of Congress and Charter of the Bridge Company says, that he shall fix the toll over the bridge and the approaches thereto, and don't you know he has fixed the approach to that bridge on the Missouri side at 720 feet, and left the rest out entirely?

A. No, sir.

146 Q. Then, you don't believe the map and tracings certified to by the Secretary of War?

A. No answer.

Q. You and the Secretary of War don't agree on the approach to that bridge ?

A. Probably we don't.

Q. Do you know?

A. I say we probably don't.

Q. I am not asking you that, I am asking you this: do you know; will you please answer the question—you say the approach extends to the Cotton Belt three miles, and the Secretary of War has given his view of it as 720 feet?

A. We have different understanding of it.

Q. The difference is your company and you denominate a railroad and the building of a Terminal Railroad as the approach to the bridge, and the Secretary of War denominates the approach to be 720 feet?

A. We denominate it from the point to where we connect with the railroad in order for them to get on the bridge.

Q. That is all.

Redirect examination:

By Mr. CRAMER: I will get you to state, if section nine of the Act of Congress authorizing the construction of this bridge, does not state that all railroad companies desiring to *sue* any bridge constructed under this act shall have and be entitled to equal privileges to the use of it upon the payment of reasonable compensation, and in case that the parties interested shall fail to agree upon the sum paid, all matters of issue between them, shall, upon the application of either party, be determined by the Circuit Court of the United States, and if that provision does not prevent any combination that Mr. Smith alleges?

A. Yes, sir.

Q. That is all.

Recross-examination:

By Mr. SMITH: Why does the Choctaw railroad at Memphis instead of using the bridge, transfer by boat?

Mr. MILLER: We object to that, if the court please, as irrelevant, immaterial and incompetent.

Q. I will ask you, if it is not because the bridge charges are exhorbitant?

Mr. MILLER: We object to that, if the court please, because it is irrelevant, immaterial and incompetent.

Q. I will ask you, if the Secretary of War only fixed the approach at 720 feet, and you fixed it at 12,000 feet, whether or not the Bridge Company can fix it outside of the 720 feet at this place?

A. I don't know—I am not familiar with the modes of operation.

Q. That is all.

JOHN A. HOPE being sworn on behalf of the Bridge Company, testifies as follows:

Direct examination:

By Mr. MILLER: Do you know Mr. R. G. Stone?

A. Yes, sir; I have met him.

147 Q. Do you know Mrs. Finley?

A. Yes, sir.

Q. Do you know Mr. R. M. Finley?

A. Yes, sir.

Q. And J. H. Crowder?

A. Yes, sir.

Q. Are either of these parties here?

A. No, sir; I have not seen them.

Q. That is all.

Cross-examination.

By Mr. SMITH: Why is Mr. Crowder not here?

A. I understand his wife is very sick, and his health is poor.

Q. And he cannot leave home on account of his wife's condition?

A. That is my understanding.

Q. Is Mr. C. G. Warner and the other gentlemen, who own this Bridge Company here?
A. I don't know the gentlemen—I have not seen them nor heard of them.
Q. Do you know where they are?
A. No, sir.
Q. Do you know Mr. Kostosky, official purchasing agent?
A. I know him, but I have not seen him either.
Q. Do you know what his business was?
A. He testified he was a land man——

Mr. MILLER: We object to hearsay testimony.

Q. You heard him testify?
A. Yes, sir; that he was right of way man for the Cotton Belt and the Southern Illinois and Missouri Bridge Company.
Q. Did you hear him testify how long he had been trying to buy this property?

Mr. MILLER: We object to that, if the court please, as being utterly irrelevant, immaterial and incompetent, and they know it is not competent.

Q. Do you know of hearing him testify as to whether or not he made any attempt to purchase the property as early as June, 1901?

Mr. MILLER: We object to that, if the court please, as irrelevant, immaterial and incompetent, and hearsay.
The COURT: Objection sustained.

Q. That is all.

Mr. BANDENSTETRICK, or words to that effect, being sworn on behalf of the railroad—the Bridge Company, testifies as follows:

Direct examination.

By Mr. MILLER: Where do you live?
A. Kelso, Scott County.
Q. What business are you engaged in?
A. General merchandise and grain business.
Q. How long have you lived there?
A. Ten years.
Q. Ten years?
A. Yes, sir.
Q. Are you familiar with the property around Gray's Point and especially the Stone farm?
A. Yes, sir.
Q. How far is Kelso from the Landing at the Stone farm?
A. Five miles.
148 Q. Five miles?
A. Yes, sir.
Q. You say you are familiar with that Stone farm?
A. I have never been over it—I know where it is.
Q. You know the general character of the property in that neighborhood?
A. Yes, sir.

Q. I will ask you to tell the jury what, in your judgment, that land is worth per acre in the market for whatever it could be used?

A. Well, I would judge in my opinion it would be worth for farming purposes from eight to ten dollars per acre.

Q. Did you ever know it to be used for any other purpose?

A. No, sir.

Cross-examination.

By Mr. MOZLEY: You say you have never been on this land?

A. I have never been over it.

Q. Then, on what do you base your opinion that it is worth eight or ten dollars per acre, if you have never been over it?

A. I have been along the line of the land.

Q. Have you been along the line of the land to investigate its character to see what it is worth for any purpose?

A. I am judging it from others.

Q. I am not asking you that; I am asking you, if you have ever been on this land with the view of investigating its character to see what it is worth for any purpose, at any time in your whole life?

A. Only as I have stated.

Q. Then, as a matter of fact, you know nothing about the value of this land, only as you have gained from other lands?

A. No, sir; only for farming purposes.

Q. You don't know whether or not this land is suitable for any other purpose, except farming purposes, do you?

A. I would suppose it would be.

Q. What makes you suppose that?

A. Well, it might be used for other purposes—for railroads or something like that.

Q. Well, do you know, or don't you know, as a matter of fact, that this particular strip of land seeking to be condemned by the Bridge Company is peculiarly located and favorably situated for railroad and bridge constructions—do you know that, or not?

A. I suppose it would be.

Q. I don't care about your supposition—tell the jury whether or not you know?

A. Yes, sir.

Q. It would be?

A. Yes, sir; it would be.

Q. If that be true, and if it be true that four or five railroads desire to use this strip of land as an outlet for them to cross the river, wouldn't you then say that on account of its favorable location that it would be worth more than eight or ten dollars per acre,

149 because it is adapted for that purpose and because it occupies this location?

A. Well, it would be.

Q. You know it would be, don't you?

A. Yes, sir.

Q. Then, when you was testifying to the jury that in your opinion it is worth only eight or ten dollars per acre, then you don't mean that, do you?

A. I mean for farming purposes.

Q. Then, you stated that value without any particular basis for the statement at all as far as your knowledge is concerned—you never farmed it any?

A. No, sir.

Q. You never investigated any crops that it produced?

A. No, sir; I never investigated.

Q. You know nothing about its yield of any kind or character?

A. No, sir.

Q. How did you happen to come here as a witness?

A. I was subpœnaed to come over here.

Q. Who paid your way?

A. I paid my way here.

Q. Did you have an agreement with anybody direct, or indirectly, to pay your expenses over here?

A. No, sir.

Q. Are you in any wise interested in the Cotton Belt Railroad?

A. No, sir.

Q. Have you any transportation over it, or any passes issued to you?

A. No, sir.

Q. How far do you live away from this land?

A. About five miles.

Q. Who approached you to ascertain your knowledge of the value of this land—who came to you to ascertain what you knew about it first?

A. No one.

Q. You have not talked to any person about your knowledge of these things?

A. No, sir.

Q. All you know about it is that a subpœna was served on you to come over here?

A. Yes, sir.

Q. Have you ever testified before in this case?

A. No, sir.

Q. At no time?

A. No, sir.

Q. You say that in your judgment this strip of land is very favorably located for a bridge site?

A. Yes, sir; I do.

Q. Now, what do you think it would be worth as a bridge site?

A. Well, I am not familiar with railroad business.

Q. Then, you are unable to tell the jury—you are unable to give the jury any information as to what this land would be worth for a bridge site?

A. No, sir; I am not familiar with that kind of business.

Q. Suppose this land on account of its location is favorable for Terminal Railroad purposes, do you know what the site for that purpose would be worth?

A. No, sir; I have no idea.

Q. You may stand aside.

CHAS. A. LEADEY, being sworn on behalf of the Bridge Company, testifies as follows:

150 Direct examination.

By Mr. MILLER: Where do you live, Mr. Leadey?
A. I am at Benton.
Q. How long have you been living at Benton?
A. All my life.
Q. Do you know this country, or, are you familiar with this—I will ask you first, what, if any, official position you have held in Scott County?
A. I have been probate judge there.
Q. For what length of time?
A. Two terms.
Q. Eight years?
A. Well, nine years—I was appointed for a while.
Q. Do you know real estate in Scott County?
A. Yes, sir.
Q. Are you familiar with the property in and around Manning's Landing?
A. Yes, sir; I am.
Q. Do you know this Stone farm?
A. Yes, sir.
Q. How long have you known that farm, Judge?
A. Why, about twenty years.
Q. Twenty years?
A. Yes, sir.
Q. Do you know how much of it is in cultivation?
A. It is a broken farm—it is in different places—I should judge about one-half of it, 140 or 150 acres—I hardly believe there is a half, but there is somewhere in the neighborhood.
Q. That portion that is in cultivation what character of land is it?
A. It is a rocky country—hilly and broken.
Q. For what purpose has this farm been used since you have known it?
A. Old man Stone lived there and cultivated it as a farm.
Q. What relation does the old man Stone bear to R. G. Stone and Mrs. Finley?
A. Their father.
Q. Was Mr. Stone and Mrs. Finley raised on that farm?
A. They have been there ever since I can recollect—I don't know whether or not they was born there.
Q. They lived there and grew into manhood and womanhood?
A. Yes, sir.
Q. On that particular farm?
A. Yes, sir.
Q. You say you never knew of it being used for any thing else, except for farming purposes?
A. No, sir.
Q. What, in your judgment, for the only purpose you ever knew of this place being used before this bridge was built there, was its value per acre?

A. I think it was worth twenty-five or thirty dollars per acre.

Mr. Stenographer—do you know where this right of way goes through the farm?

A. No, sir; I know where it goes at the river—I have never been over the right of way.

Q. Please look at this plat—this green represents the right of way, and here is the Stone land (indicates)——

Mr. CRAMER: Mr. Miller, this is a better plat.

151 Q. This represents the right of way (indicates), and this in heavy lines the Stone land—put it the other way—turn it the other way—that is right—now, taking out a strip 200 feet wide through that land in the shape it is shown for that right of way, I will ask you what effect, in your judgment, would it have upon the balance of the tract, as to increasing or decreasing its value?

A. I think it would damage it some—my recollection is that this right of way will go through some of the cleared land—it would be some trouble to get from one part to the other.

Q. Have you no definite idea as to the extent of the damages?

A. I have not been on the ground—I could not say about that.

Q. Do you think that the building of the bridge and the railroads coming there would, in fact, increase the general value of the farm, in your judgment?

A. Yes, sir; I think the bridge coming there would increase the value of all other lands in the country there.

Q. You think it would increase the value of all lands in that country?

A. Yes, sir.

Cross-examination.

By Mr. MOZLEY: Do you think the railroads coming in there would increase the value of this land any more than the other land in the neighborhood?

A. No, sir; I never said that.

Q. Then, there would be no advantage peculiar to this land that we are talking about by reason of the establishment of the railroads there?

A. I testified that I thought there would be some damage to it in cutting the farm——

Q. I am not asking you that; I am asking you this—you don't say there would be any peculiar benefit to this particular tract of land by the establishment of these railroads and bridge that would not be shared by the lands in common around it?

A. No, sir.

Q. You say, Judge, this land is worth in your judgment, twenty-five or thirty dollars per acre?

A. Yes, sir.

Q. Upon what do you base that statement?

A. Well, I believe that it will make pretty fair wheat; it is not much corn land, I figured on what per cent. it will yield, and I think it is worth twenty-five or thirty dollars per acre for farming purposes.

Q. You are basing that upon its value for farming lands?

A. Yes, sir.

Q. You are not taking into consideration any other purpose for which this land might be used?

A. No, sir; I am not.

Q. Judge, are you able to tell the jury what this land in controversy is worth for a bridge site?

A. No, sir; I am not.

152 Q. Are you able to tell the jury what this land is worth for a Terminal Railroad?

A. No, sir; I am not—I am not a railroad man.

Q. Do you know whether or not the location—the peculiar location of this tract of land sought to be condemned is more feasible and more favorable for the construction of the bridge and railroad terminals than any other tract of land in that neighborhood?

A. No, sir.

Q. Don't you know as a matter of fact this particular tract of land is peculiarly located and favorably located for that purpose?

A. Yes, sir; I should judge it was the best place, or they would not have put it there.

Mr. MILLER: That is right.

Q. You don't undertake to state what this land is worth as a bridge site, nor terminal purpose, or railroad approaches leading to that bridge?

A. No, sir.

Q. You are merely testifying as to what it would be worth for farming purposes?

A. Yes, sir; and that is a good high price for it.

WILLIAM HIZER, being sworn on behalf of the Bridge Company, testifies as follows:

Direct examination.

By Mr. MILLER: Where do you live, Mr. Hizer?

A. Benton, Scott County, Missouri.

Q. What is your business?

A. Merchant.

Q. Are you familiar to any exent with farms in Scott County?

A. Yes, sir.

Q. What official position, if any, have you held in this county of Scott?

A. Treasurer and Collector.

Q. How long Collector?

A. Four years.

Q. Eight years altogether?

A. Yes, sir.

Q. Are you familiar with the country in and around Manning's Landing?

A. Yes, sir; somewhat.

Q. How many years have you known that country?

A. Ten or twelve years.

Q. Do you know R. G. Stone?

A. Yes, sir.

Q. And Mrs. Finley, you know her?
A. Yes, sir.
Q. Do you know their father?
A. Yes, sir.
Q. Was he a blind man?
A. No, sir.
Q. I suppose he was by selling his property so cheap—where did they live?
A. On the farm.
Q. Up on the river near Manning's Landing?
A. Yes, sir.
Q. Where does Mrs. Finley and Mr. Stone live, when you knew them—where were they raised, if you know?
A. On the farm.
Q. You say you are familiar with the farm?
A. I have never been over it—I have never been on it.
Q. You are familiar with lands in that neighborhood there?
A. Yes, sir.
Q. I will ask you for what this farm has been used ever since you knew it?
A. Farming.
Q. Farming purposes?
A. Yes, sir.
153 Q. What in your judgment, is it worth per acre?
A. Twenty-five dollars.
Q. Twenty-five dollars?
A. Yes, sir.

Cross examination.

By Mr. MOZLEY: Mr. Hizer, when you state this land is worth twenty-five dollars per acre, you mean merely for farming purposes, do you?
A. Yes, sir; what it has been used for.
Q. Can you tell the jury what makes land valuable?
A. Well, I don't know that I can.
Q. Can you tell the jury why a lot in Benton, the town you live in, for instance, is worth more money than a block of ground of equal size out ten miles from the town in the country?
A. Why, I don't know whether or not I can—some ground out ten or twelve miles from Benton in the country is worth as much as the land in Benton.
Q. Probably I have used the wrong town for illustration?
A. Yes, sir; you have.
Q. Can you tell the jury why a lot in the heart of St. Louis would be worth more money than the same size tract of land out in the country?
A. The situation, I suppose.
Q. Then, the location or the situation of a tract of land really has all to do with its value, doesn't it, Mr. Hizer?
A. Yes, sir; to a great extent.

Q. Do you know whether or not this tract of land in controversy is favorably located for a bridge site?

A. I have understood so.

Q. You know it to be a fact, don't you, that this Bridge Company, I cannot now call its name, is endeavoring to condemn this land for the purposes of railroad and bridge facilities, don't you?

A. Yes, sir.

Q. Are you able to tell the jury, Mr. Hizer, what this land is worth for a bridge site?

A. No, sir.

Q. Could you give the jury any estimate of the value of this land for terminal facilities and railroad purposes in connection with this bridge?

A. No, sir.

Q. You are of the opinion, however, that land situated so that it may be used for purposes of that character would be of far greater value than lands that could not be used for that purpose?

A. Yes, sir; I suppose so.

Q. That is all.

B. F. ANDERSON, being sworn on behalf of the Bridge Company, testifies as follows:

Direct examination.

By Mr. MILLER: Where do you live, Mr. Anderson?

A. Commerce, Scott Coun-y, Missouri.

Q. How long have you lived there?

A. About forty years.

154 Q. What official position, if any, do you hold in — County now?

A. Judge of District number one.

Q. What business are you engaged in?

A. Mercantile business, grain business and commission business.

Q. Have you any farming interests in Scott County?

A. Yes, sir.

Q. How far is Commerce from Manning's Landing?

A. About five miles, possibly six.

Q. Are you familiar with the country in and around Manning's Landing?

A. Yes, sir.

Q. Do you know R. G. Stone?

A. Yes, sir.

Q. Do you know Mrs. Finley?

A. Yes, sir.

Q. Tell the jury on what farm they were raised?

A. On the Sparrow Hawk land, which is known as the Stone farm.

Q. How is the farm situated with reference to the approach—the western approach of the bridge?

A. It is situated across the western approach.

Q. Are you one of the commissioners appointed by the court to appraise these damages?
A. Yes, sir.
Q. Did you go on this farm?
A. Yes, sir.
Q. When did you go on the farm?
A. About the 30th of March—I am not positive about that, but it was the last of March sometime.
Q. Did you go over the farm on that occasion?
A. I went over the right of way of that farm as pointed out by the surveyors and engineers in charge of the work.
Q. How long have you known that farm?
A. Thirty years.
Q. I will ask you whether or not you have been intimately acquainted with it and its condition?
A. Yes, sir.
Q. Without going to the map you know how the right of way runs through that farm?
A. Yes, sir; reasonably so.
Q. Do you know how many acres of cleared land in the farm?
A. No, sir; I don't. Approximately about 150 acres, I think.
Q. What is the character of the timber land, the uncultivated land?

Mr. Smith: If the court please, I desire to object to this witness testifying, because it develops that he was one of the commissioners appointed by your Honor to assess damages, and while acting in that capacity as we look at it, was acting judiciously, and his acts in that respect are a part of the record of this court.

Q. What is the character of the land not in cultivation?
A. Very broken and hilly.
Q. During the thirty years you have been familiar with the farm, what use has it been put to?
A. Farming purposes—wheat, corn and such like.
Q. Now, I will ask you what, in your opinion, does the taking out of that farm, in the manner it is sought to be taken out
155 of it, the right of way 200 feet wide from the river to the west about 4,500 feet, damage the tract, if anything—including the value of the ground appropriated?
A. I don't know just how to answer that question—now, for farming purposes exclusively it would not take up more than six or seven acres of the land cultivated, but if you will permit me to state further, by reason of the road going across there, it has not taken anything away from the value of the land; it has really increased the value of the land in dollars and cents materially, and for farming purposes they have taken away probably six or seven acres.
Q. Then, in your judgment, the building of this bridge approach though out of the ground, or its appropriation, what, if anything, did you regard the parties owning that property as being damaged for the 200 foot right of way across that land?
A. Well, the way I viewed the matter, I don't know whether or

not it would be proper to answer the question that way. By reason of other roads having come in there, and by reason of other damages having been assessed for other property there, I judged that the land was worth about $400.00 per acre according to the damages awarded to other land near there and adjacent to this property.

Q. Then, by reason of the various railroads in there you regarded the property increased in value, and gave it the benefit of that?

A. Yes, sir; the roads already there and in course of construction at the time the suit was filed.

Q. But the farm itself was increased in value?

A. Yes, sir; certainly so.

Q. That is all.

Cross-examination:

By Mr. SMITH: Mr. Anderson, are you acquainted with the land lying north of the Stone land?

A. Yes, sir.

Q. What land is that?

A. I am not positive about that as to who it belongs to—I know the man that lives upon it—I cannot just now call his name—it is known as the Daugherty land.

Q. The Hobb's land?

A. Yes, sir.

Q. What it is called?

A. I think Mr. Rose joins on the south—I think Mr. Rose joins it on the south.

Q. Do you know how many acres there is of the Stone land?

A. I don't know exactly—about 300 acres, I think.

Q. I believe you stated that by reason of the location of the bridge, and the running in of these railroads, that the whole Stone tract of land had been increased in value between three and six hundred dollars per acre?

A. No, sir; I said the land taken up by this 200 foot strip, that the whole tract of land was increased in value, but not four to six hundred dollars per acre the twenty acres that was sought
156 to be condemned was worth four to six hundred dollars, but I didn't take into consideration of the bridge getting built there at the time, but these other railroads were there at the time, and by people thinking it could be sold for that price.

Q. You say that you never took into consideration the value of this land for a bridge site?

A. No, sir; not particularly so, not for a bridge site as I understood the ruling of the court, and the instructions was to take into consideration all the things on the ground that was there that tended to increase the value of the property, and not take into consideration anything that was to be.

Q. You don't mean to say that the court instructed you?

A. No, sir.

Q. What did you take into consideration?

A. Took into consideration the value of the land by reason of the approaches or other railroads being there and things that were

there, and probably because that the bridge would cross there and not that the bridge was actually there.

Q. Don't you know, Mr. Anderson, that the railroads was there and wanted to cross that bridge?

A. Yes, sir.

Q. How could you consider benefits being derived from the railroads and not the benefits derived from the bridge?

A. The bridge wasn't positive—nobody had built the bridge, but the railroads was there and they was positive, and the other things already there.

Q. Wasn't they at work building the bridge?

A. Yes, sir; on the other side of the river.

Q. Been at it over a year?

A. Yes, sir.

Q. Yet, you say it wasn't certain that the bridge was to be built?

A. It wasn't a positive fact.

Q. In your judgment, what would you think the land would be worth if the bridge wasn't built at all?

A. I suppose that land by reason of the roads in there at the time, and of the things on the ground at the time the suit was filed—all those things, that the whole farm could probably have been sold—the whole farm for something like fifty or seventy-five dollars per acre.

Q. Do you suppose that that twenty acres that you consider worth four or five hundred dollars per acre would be used at all?

A. No answer.

Q. Why would any railroad want to run up to the approach and stand there at an altitude of about sixty feet?

A. I say I never took into consideration that the bridge would be built at all.

Q. Don't you know that that twenty acres, if the bridge wasn't there, would not be worth any more than the rest of the farm?

A. I don't know that it would be.

Q. Then, you did take into consideration the bridge being built?

A. But it was the way it was taken——

Q. You have just said that the approach across that tract
157 would benefit it?

A. Yes, sir; that would be from the hypothesis that the bridge would be constructed.

Q. And if there was no bridge there at all, there would be no approach, would there?

A. I don't know about that.

Q. Are you fixing it by reason of the approach to the bridge or railroad?

A. I made up my mind on the contention of the Cape Girardeau and Thebes Terminal Railroad Company against this Bridge Company for this same identical land—it was the reason I put the value upon this identical land; the contention on the part of Houck and others for this same land that the Bridge Company

was contending for was the reason I made up my mind on the question.

Q. I am not asking you that; I want to know whether or not you assessed the value of that property, the twenty acres for a bridge approach or railroad purposes, if you did not expect any bridge to be built, how did you estimate it?

A. We expected it to be built there, but it wasn't there.

Q. Do you want us to believe that you did consider that the bridge would be built?

A. Yes, sir; certainly so.

Q. I will ask you whether or not you did assess that twenty acres for railroad purposes and for bridge purposes?

A. I don't know that I made either one—we was to assess the damages of the land—I don't know that it specified whether or not it was for bridge purposes or railroad purposes.

Q. You never assessed for town purposes?

A. No, sir.

Q. What did you assess it for?

A. Railroad and whatever purposes they wanted to use it for.

Q. From what information you obtained in viewing the premises, I will ask you whether or not you understood that it was for bridge purposes or railroad purposes?

Mr. MILLER: We object to that, if the court please, because it is irrelevant, immaterial and incompetent.

The COURT: I think it is competent.

Mr. MILLER: We except.

A. What is the question?

Q. I want to know from all the information, which you received, whether you didn't conclude, or wasn't made to believe that it was either for railroad purposes or bridge purposes or for both?

A. My outside opinion was that it was for bridge purposes, but we did not take into consideration that it was for bridge purposes, but for all these things that existed at that time.

Q. You did not take into consideration that it was for bridge purposes?

A. No, sir; but I knew it was myself.

158 Q. When did you take into consideration the value of that property for a bridge site across the Mississippi River?

A. We never took it into consideration the value that that bridge would put on that land from the fact the bridge wasn't there, it wasn't built.

Q. What do you consider that property worth for a bridge site?

A. I have no opinion in the matter at all.

Q. You have no opinion in the matter at all?

A. No, sir; it is not for a man of my calibre to figure on, and I am sure you don't know anything more about it than I do.

Q. You don't know about the value of the bridge being there would have on the land?

A. No, sir.

Q. Did you take into consideration the value of the land for terminal railway purposes?

A. I don't know that I did for terminal purposes—I took into consideration for all purposes to which they might want to put that land—there was such a preponderance of testimony that I could not tell what they wanted.

Q. You simply arrived at your opinion by guessing?

A. No, sir; other lands had been sold in the community, and from those prices we made up our minds.

Q. Had any lands been sold in the community for a bridge site?

A. No, sir; not that I know of.

Q. Nor for terminal purposes?

A. No, sir.

Q. Then, you had no examples to go by?

A. No, sir; only Mr. Hillman's land and others been condemned.

Q. Then you formed your conclusions as to the value of this property on account of the ordinary price of farm land?

A. No, sir; oh, no, sir; the land that had been condemned by the railway company and used for railroad purposes.

Q. Now, Mr. Anderson, how would that fact affect your judgment, when you was arriving at the value of a piece of property for a bridge site?

A. We were not arriving at that conclusion.

Q. Isn't this property to be condemned for bridge approaches?

A. Yes, sir.

Q. The purpose of this property is to let trains off of the bridge onto the Missouri side?

A. Yes, sir.

Q. Then, you never took into consideration its value for a bridge site—you never considered it for a bridge site?

A. Yes, sir; but never took into consideration the value that the bridge would give to that land.

Q. You said something about getting instructions—tell the jury who gave you those instructions?

A. We never had any special instructions—only, as I understand the law, that we ought not take into consideration the value that the bridge would put on the land.

Q. His Honor never sent you any instructions?

A. No, sir; I don't think he did.

Q. Who explained the law to you?

A. That is all-right about the law, I got it.

Q. Where did you get it?

159 A. That is my construction of the matter, and that is all I can give you—that is my honest conviction in the matter.

Q. You are not willing to state who did instruct you—we talked that matter — with the commissioners about reaching conclusions?

A. Yes, sir; I arrived at that conclusion in the commissioners' room after I heard the argument of you gentlemen.

Q. This is a very feasible site for a railroad bridge building?

A. Yes, sir.

Q. Very much so?

A. Yes, sir.

Q. It has been considered eligible for a bridge site for a long time?

A. Yes, sir.
Q. How long?
A. There has been sounding there for about twenty years right along the front there.
Q. Along the Stone land?
A. Yes, sir; right along there.
Q. They have been sounding for twenty years?
A. Yes, sir; it was only a surmise on our part, but we supposed it was for a bridge site.
Q. That is all.

Redirect examination:

By Mr. MILLER: This is the first and only bridge ever located there.
A. Yes, sir.
Q. Did they sound down about the Rose land?
A. Yes, sir; and down about Commerce.
Q. Wasn't Mr. Smith there and made an argument?
A. Yes, sir.
Q. And Mr. Hope?
A. No, sir.
Q. And Mr. Arnold?
A. Yes, sir.
Q. That is all.

Recross-examination:

By Mr. SMITH: Now, you will admit that you never paid very much attention to what I said?
A. I will not admit that.
Q. You never agreed with me, did you?
A. I will not say that I never listened to you, for I wanted to show you that much respect.
Q. That is all.

A. J. MATTHEW:, being sworn on behalf of the Bridge Company, testifies as follows:

Direct examination:

By Mr. MILLER: Where do you live?
A. Sikeston, Scott County.
Q. How long have you lived there?
A. Thirty years.
Q. What is your business?
A. I am in the mercantile business more of less and in the grain business.
Q. Have you much land interest in Scott County?
A. Yes, sir; considerable land.
Q. I will ask you if you are familiar with the Stone farm?
A. Yes, sir; fairly well.
160 Q. You was one of the commissioners appointed to assess the damages?
A. Yes, sir.

Q. I will ask you whether or not you went over the farm over the proposed right of way?
A. Yes, sir.
Q. Together with the other commissioners?
A. Yes, sir.
Q. Have you been on the farm on any other occasion before that?
A. I don't know that I have.
Q. You are familiar with the lands in that vicinity?
A. Yes, sir.
Q. Do you know how many acres there is in the Stone farm?
A. I don't know exactly—I would take it to be forty or fifty, possibly seventy-five—I never noticed particular how much there was.
Q. Now, Mr. Matthews, you say you are familiar with this land?
A. Yes, sir.
Q. What, in your opinion, would be the effect on the balance of the farm by the cutting out of this little amount; would it decrease or increase the value of the remaining part of the farm?
A. I think the bridge being there would enhance the land.
Q. What, in your opinion, would the tract be damaged, putting the land appropriated at 20 3-10 acres; by appropriating this land for bridge purposes, what would be a fair compensation for these owners for the appropriation, taking into consideration the amount taken out and the shape it is cut out?
A. Do you mean what the land would be damaged or enhanced by reason of this being taken for bridge purposes as to whether or not the bridge would enhance the tract or decrease it?
Q. What would the effect be on the farm by taking out this piece of land?
A. Well, as a farm it would be damaged little more than the expense of keeping up the two fences; as a tract of land for a farm I would think not exceeding thirty dollars an acre damaging it as a farm.
Q. Now, then, what would be the effect on this by building the bridge there—in arriving at your judgment there, did you take into consideration the surrounding fact of other railroads being there and all these things as to whether or not they would increase or decrease the value of it?
A. We taken that into consideration, and all on the place to some extent.
Q. In your judgment, the property would be damaged about thirty dollars per acre for the land appropriated?
A. Yes, sir; for farming purposes, and it is not very desirable for that purpose.
Q. Did you ever know that farm to be used for any other purpose than farming purposes?
A. No, sir; I never knew it, if it was.
Q. How long did you say you had known the farm?
A. I have known it for about thirty-five years—ever since
161 I was a boy—I can not say that I knew that particular farm, but was acquainted in that locality; all the farms in that locality.
Q. Now, Mr. Anderson—Mr. Matthews, I mean—now, taking ev-

erything into consideration, what, in your judgment, in dollars and cents, is the injuries to that farm by reason of the appropriation of this strip of land 200 feet wide running through it, appropriated for bridge purposes; taking everything into consideration?

A. Well, taking it as it is with the surroundings that property had there, when we examined it, we estimated it at $400.00 per acre.

Q. Twenty acres?

A. Yes, sir; and I have no reason to believe it is any more than that, or any less—something in that neighborhood, I think.

Q. That is all.

Cross-examination.

By Mr. SMITH: Mr. Matthews, tell the jury when you went to examine that land—how did you approach the farm?

A. We came in from the north and rode down the river to the point the engineer showed us the bridge was to be located.

Q. What did you do then?

A. We walked back through it over the right of way—over the contemplated right of way.

Q. Who was with you?

A. There was several men, among them Mr. Hope and Mr. Miller and young Louis Houck, the engineer and three commissioners.

Q. You walked over the entire strip?

A. Yes, sir; we walked entirely through the entire tract of land—we might have gotten a little above or below.

Q. Did you observe that the company was at work on the Illinois side?

A. Yes, sir.

Q. Did you see any evidence of the work on this side?

A. Well, we did at the west side of the farm—the river is on the east and on the west side was evidence.

Q. What information did you get on the question as to this being a bridge site that day?

A. Well, we was advised that there was to be a bridge built there.

Q. What information did you get as to it being a very feasible place to locate a large railroad bridge?

A. We got no information further than it was the place selected; we supposed it was desirable by being located there.

Q. From your observation did you think it was a very desirable place for the construction of a railroad bridge?

A. Yes, sir; I took it to be a desirable place—I cannot say that I knew it was much from the looks of it.

Q. On the Illinois side the bluffs approach within three or four or five hundred feet of the water's edge?

A. I don't know, but I suppose they did from the looks.

Q. On this side the bluffs or hills approach within 700 feet or less?

A. Yes, sir; think that is what the engineer told us.

162 Q. There are hills and bluffs on each side of the river at that point?

A. Yes, sir.

Q. Did you ascertain or try to ascertain the condition of the bottom of the river at that point?

A. I don't know that I did further than the information I got at Benton, when you gentlemen were there.

Q. You did ascertain or learn that the bottom of the river where the bridge crosses was practically solid rock all the way across?

A. I am not sure, but I think I did—I heard it was very desirable.

Q. The information you got was that it was very favorable for bridge purposes?

A. Yes, sir.

Q. Did you interest yourself as to the probability that large trunk railroads, were intending to cross there over that bridge?

A. Yes, sir; I heard of them expecting to be there and knew some was there, and some was contemplating being there.

Q. It is known that the I. C., the Cotton Belt, the Missouri Pacific, the Frisco and the C. & E. I.—it was common information that those railroads, or at least four of them were to cross over that bridge?

A. Yes, sir; those roads—I understood there would be several lines cross there.

Q. It is also common information that they belong to large systems of railroads?

A. Yes, sir.

Q. I will ask you further, Mr. Matthews, whether or not it is well understood that the I. M., the Cotton Belt, the Frisco and the road running in on the east side are the most feasible routes for reaching Chicago, St. Louis and other large cities?

A. I never heard it discussed as to the grounds being the most desirable.

Q. They have good tracks leading up to that bridge?

A. Yes, sir; I understood they was good roads.

Q. Did you consider further that they would do a large business belonging to these large systems?

A. Yes, sir; I thought they would.

Q. Do you know anything about the further fact that the Cotton Belt and other roads had large yards in the vicinity of the Hilleman tract of land?

A. I never knew they had them there, but understood that they was to locate yards in that neighborhood? *A.* I never looked over that.

Q. Did you undertake to inform yourself as to the amount of business that would be done, and the yard room that would be necessary to handle the business of the roads that would cross that bridge?

A. I never thought to inform myself on that—I took in the condition there at the time.

Q. Did you try to get information as to the number of tracks?

A. No, sir.

Q. You had testimony as to what could be done there, didn't you?

A. Yes, sir.

Q. You heard all testimony?

A. Yes, sir.

163 Q. Now, you say you fixed the value of this land at $400.00 per acre?

A. Yes, sir.

Q. Tell the jury how you arrived at your conclusion?

A. We based that upon the information we had about the values of land around there for such purposes; for instance, there was a tract of land sought to be condemned—I heard part of the trial at Gray's Point and near by a few years before that—a few years before this condemnation proceeding, and know from the values there and other places that were used for such purposes.

Q. You also learned afterwards that that Gray's Point business was a dead failure, didn't you?

Mr. MILLER: We object to that——

Q. And that the gentleman, who built that railroad lost his head for building it——

Mr. MILLER: We object to that, if the court please, because it is not a dead failure.

Q. I know a little bit myself—do you know what became of Mr. Fordyce, the man who built that road?

Mr. MILLER: We object to that, if the court please, about Mr. Fordyce——

A. Yes, sir; I heard about his misfortunes——

Mr. MILLER: We object to that question, if the court please.

The COURT: Objection sustained.

Mr. SMITH: We except.

Q. So trying to reach a basis of estimation, you went to Gray's Point?

A. I went to this farm and considered all those things around it——

Q. And the Cotton Belt is now endeavoring to get away from Gray's Point and cross this bridge?

A. Yes, sir; I understood that is what the bridge is for, is for these railroads, and I further considered was once the only site between St. Louis and New Orleans.

Q. In fixing the value of this railroad approach to the bridge, I will ask you whether or not you took into consideration the value of that site for bridge purposes?

A. Yes, sir; I think I did.

Q. Tell the jury how you reached your estimation on that point?

A. I considered the surroundings there, and considered the former condemnation suit at Gray's Point, and while it was argued by one side that it was the only place on the river and by the other side that there was lots of other places just as good—I considered that it was a good place undoubtedly, but I considered that like Gray's Point it might not be the only place.

Q. I will ask you whether or not you didn't receive information from an engineer, from Mr. Ponder, that to build a bridge across the Mississippi and put it on the Hobb's land would cost from forty to one hundred thousand dollars more than it would cost at its present location?

A. No, sir.

164 Q. What information did you get?

A. Nothing only what you heard and what Mr. Hope and Mr. Arnold heard on the grounds that day.

Q. Will you say that Mr. Ponder didn't state that it would cost all the way from forty to one hundred thousand dollars more to build the bridge on the Hobb's land?

A. I don't remember what he said—I know he said it would cost much more, which I already knew.

Q. I will ask you whether or not Mr. Angier didn't refuse to state what it would cost to build the bridge across the Mississippi River with the abutment resting on the Hobb's land?

A. I think he refused to make a statement that day, stating he could not do it in so short a time.

Q. Mr. Matthews, who is it that told you that you could build a bridge across the Mississippi River and put the abutment on the Hobb's land as cheap as you could on the Stone land?

A. I don't know that anybody did.

Q. Then the statement you made awhile ago was just a mistake?

A. What was it I said?

Q. That you was informed that a bridge could be built there as cheap as anywhere else?

A. I don't think I said that—I said I supposed it was the best place, because it was selected.

Q. If it was considered or expressed that it would cost from 75 to 100 thousand dollars more to build the bridge on the Hobb's land than it would on the Stone land, would it affect your judgment as to the value of the site adopted by the Bridge Company?

A. It would not affect me, because if it cost so much more they would not build it there.

Q. What I want to get at is did they locate this place at the most logical place for a bridge?

A. I thought so.

Q. Didn't you think it would make it very valuable property for railroad purposes?

A. Yes, sir.

Q. Don't you know that an ordinary mill site on a stream of the size of Whitewater is worth $10,000?

Mr. MILLER: We object to that, if the court please.

Mr. SMITH: We except.

Q. Then you said, Mr. Matthews, that it is a very logical site for the building of a bridge?

A. Yes, sir.

Q. That is the most desirable site——

A. Yes, sir.

Q. In that locality?

A. Yes, sir.

Q. Do you think that $8,000.00 would cut any figure for a moment in the location of a bridge, for the selection of the most logical site for the location of the bridge?

A. What is that?

Q. Do you think that $8,000.00 would affect the bridge company for a moment in the selection of a site for a bridge?

Mr. MILLER: We object to that, if the court please, as irrelevant, immaterial and incompetent as to what the bridge company would pay.

165 The COURT: Objection sustained.

Mr. SMITH: To which ruling of the court defendants excepted at the time.

Q. Then, you did not consider the fact, if it cost less, much less to build the bridge across the Mississippi River at the point selected and adopted, than it would anywhere else in that immediate vicinity on the Hobb's land or the Rose land, that that was one of the reasons why it was located where it is?

Mr. MILLER: We object to that, if the court please, as irrelevant, immaterial and incompetent.

The COURT: Sustained.

Mr. SMITH: To which action of the court defendants, or the exceptors, excepted at the time.

Q. Did you make any estimate as to the number of cars that would be handled across that bridge daily?

A. No, sir; I don't know that I figured on the cars.

Q. You never tried to figure on the cars?

A. No, sir; not in that way—it was considered as I said for a railroad and the purposes the bridge would be used for.

Q. Did you consider that all trains crossing that bridge going both ways would have to break upon either side of the river and be handled by that railroad company?

Mr. MILLER: We object to that, if the court please, as irrelevant, immaterial and incompetent and purely speculative.

The COURT: Objection sustained.

Mr. SMITH: To which action of the court the exceptors excepted at the time.

Q. If you did not go into that kind of figuring I would like to know how you come to reach your conclusions, that would be at all accurate for the value of this property for terminal purposes?

A. You take the Eads bridge in St. Louis, I never counted up how many cars cross that bridge, but I know there is a great deal of business done on that bridge; I saw the signs of these railroads coming in there, and I considered it a great bridge—to make myself understood better, I will say that I didn't consider that if it cost a quarter of a million dollars more to build on the tract above that it had to be built on that land, or on this land below, because it wasn't to be built there; I just considered the conditions that existed there at the time; I didn't take into consideration that it cost more or less to build a bridge on these other places, for they had not located the bridge there.

Q. You considered the advantage of location in favor of the bridge company and against the land owner?

A. You may look at it that way—I am going to treat you gentlemen right and I want you gentlemen to treat me right.

Q. You assessed the value of that property in favor of the bridge company and against the land owner?

A. I don't know that I have—you might look at it that way; I tried to do it as near right as I knew how.

Q. I believe that you stated when you fixed that assess-
165 ment, that you took into consideration that this was a bridge site?

A. Yes, sir.

Q. You also took into consideration that it was the most logical place to locate terminal yards?

A. Yes, sir; I took it to be a suitable place for all these purposes by them being there—I took into allowance, now don't mistake me—I took into allowance that the engineers might have made the same mistake that they did at Gray's Point.

Q. You considered all the interests of the railroad company?

A. You might look at it that way, but you might be wrong about me making a great mistake.

Q. You are greatly interested in the construction of these railroads, aren't you?

A. I don't think I am more interested than any other citizen in Scott County.

Q. Haven't you been seeing in Scott County, that the railroad companies get their rights of way?

A. Not all of them.

Q. Didn't you take an interest in seeing the Frisco get the right of way through Scott County?

A. Yes, sir.

Q. You have taken a great interest in it?

A. Yes, sir; in a certain section I give miles of right of way.

Q. You have thousands and thousands of acres of land scattered over the country?

A. I have some land, but I don't think it affects my ability for telling the truth.

Q. Perhaps it might?

A. You might think it would affect it.

Q. That is all.

Redirect examination:

By Mr. MILLER: You have taken no interest in getting the right of way at Manning's Landing?

A. No, sir.

Q. It has only been around Sikeston?

—. ——.

Q. All the three commissioners acted in this case?

A. Yes, sir.

Q. That is all.

The COURT: Stand aside. Who is next?

Mr. MILLER: This is our case, if the court please.

Rebuttal.

LOUIS HOUCK, being recalled on behalf of the exceptors, testifies as follows, in rebuttal:

Direct examination:

By Mr. SMITH: Mr. Houck, do you know anything about a deed that was made by Giboney Houck and L. B. Houck to the Terminal Railway Company?

A. Yes, sir.

Q. What do you know about that as to consideration?

167 Mr. MILLER: We object to that, if the court please, because the deed is in evidence and speaks for itself.

The COURT: What is the purpose of it.

Mr. SMITH: To show that the consideration was different from the consideration expressed.

The COURT: Proceed.

Mr. MILLER: We except.

Q. Tell the consideration in that deed?

A. That conveyance was made to the company by these owners in order to transfer it over to them as a company; in other words, there was no consideration at all, except they had organized a company composed of themselves, the stock being held by Mr. Crowder as trustee for the three owners; the three owners being Crowder, L. B. Houck and Giboney Houck, and each subscribed all the stock of the company for themselves, and they transferred part of this property to this company, which they had organized to build this terminal road; there was no consideration at all, it was just a transfer from themselves to the company, which was themselves, except four stockholders, who each owned one share; there was no consideration at all—that arrangement was made upon my advice. I told them, now, if you want to build anything——

Mr. MILLER: I object to that, if the court please, as hearsay testimony.

A. I say it was upon my advice—excuse me.

Q. I understand, Mr. Houck, that this 320 acres was bought from Stone and Finley by Crowder, Houck and Houck?

A. Yes, sir.

Q. And they made a deed of right of way to the Terminal Railroad Company?

A. Yes, sir; and the Terminal Railroad Company was themselves, except four shares.

Q. Who had the four shares.

A. I think they was put in there, because Crowder was the only one, he subscribed for 996 shares, and there was 1,000 shares altogether, and Mr. Crowder subscribed for 996 shares as trustee for his associates, and it took four more men to organize a railroad company, and they each one subscribed a share in order to make a board of directors.

Q. That is all.

The COURT: Stand aside. Who is next?
Mr. SMITH: This is our case, if the court please.
And this was all the testimony.

Instructions.

Thereupon the court declared the law upon the part of the exceptors and defendants in said cause, by giving the following instructions, numbers 1, 2 and 3:

168 1.

GENTLEMEN OF THE JURY:

It is your duty to assess the damages which you may believe from the evidence defendants will sustain on account of the appropriation by the plaintiff of the land involved herein.

And in assessing said damages you will be governed by the following rules, viz.:

You will consider the quantity and value of the land to be taken and the damages to the whole tract by reason of the construction of plaintiff's bridge and approach.

Value, as used in these instructions, means market value, but you are further instructed that the market value is not what it will sell for at forced sale, but it is the highest price it will bring in the hands of a prudent seller in view of all the uses and purposes for which the land is adapted; and if you believe from the evidence that said land is located so as to be eligible as a site for a bridge across the Mississippi river or so as to be adapted for use as a terminal railway, or other valuable use, then in making your estimate of its value, you should consider all such advantages and capabilities of said land, together with whatever superiorities in these respects, if any, over other lands in the vicinity.

2.

The court instructs the jury, that under the testimony in this cause, the date of the assessment of the damages by the commissioners will be taken as the date of the appropriation by plaintiff of the land sought to be condemned herein. And whatever sum you may find the property taken by the plaintiff at that time to be worth, according to the rules of fixing damages, as mentioned in these instructions, will be the amount of said damages, whatever it may be, and should be returned by your verdict.

3.

The court instructs the jury that the consideration shown by the deeds offered in evidence, either for plaintiff or defendants, is not binding on either of said parties, but only circumstances to be considered in connection with the other testimony offered in this cause, by the jury in arriving at its verdict, and you are also instructed that the considerations in said deeds may be explained by testimony

which you will also consider in your verdict, provided any such testimony of explanation was offered.

To the giving of such instructions, plaintiff Bridge Company objected and excepted at the time.

That the exceptors and defendants asked the court to instruct the jury as follows, instructions numbers 4, 5 and 6, and the court refused to so instruct the jury:

169 *Instructions Refused.*

4.

The court instructs the jury that plaintiff, under its charter and the Act of Congress authorizing it to build the bridge and approaches thereto, in view of the testimony submitted in the cause, has only power to appropriate to its use a strip of land extending westward to the bluff, for a distance of seven hundred and twenty (720) feet, for the western approach of its bridge (and the width thereof to be two hundred feet), this being the length of the approach as fixed by the Secretary of War, it being his duty by the terms of said Act of Congress to ascertain and fix the length of said approach.

And you are further instructed that you will fix and assess such damages in favor of the defendants against plaintiff for such strip of land as you may consider they have sustained by reason of the appropriation thereof.

5.

The court instructs the jury that under the law and evidence in this case, you are to determine what constitutes the approach to the bridge. And you will fix the length of said approach by your verdict. And you will fix and assess the damages for said approach according to the rules of assessing damages explained in the other instructions.

6.

The court instructs the jury that you will determine under all the testimony the question of the length of the proper approach to said bridge, and whatever that length may be, on that you will fix the damages as directed by these instructions, and the amount thereof return by your verdict, but, as to the remainder of the strip described in the petition, you will make no assessment unless you find that the whole strip or a part thereof constitutes the approach, and should you so find, then and in that event you will assess the damages accordingly on the whole strip.

To which action of the court in refusing to so instruct the jury by said instructions, the exceptors and defendants objected and excepted at the time.

For the plaintiff Bridge Company, the court gave the following instructions, numbers 1, 2, 3, 4, 5 and 6:

Plaintiff's Instructions.

No. 1.

170 The court instructs the jury that on the 24th day of April, 1902, at 10:40 o'clock A. M., the Southern Illinois and Missouri Bridge Company as plaintiff, filed in the Circuit Court of Scott County, Missouri, its petition against R. G. Stone, Nannie Finley and R. M. Finley, her husband, as owners, and Birgehardt Miller, Perry Bates and David Heldt, as occupying tenants, seeking to condemn for public use in connection with its bridge a strip of ground 200 feet wide and about 4,500 feet long, then owned by the said R. G. Stone, Nannie E. Finley and R. M. Finley, her husband, more particularly described as follows: A part of the S. E. and S W. parts of private survey No. 794 in township thirty, range fourteen east; and in lot 2, of the N. E. ¼ of sec. 2, township 29, range 14 east; being a tract of land 200 feet wide, one hundred feet on each side of the center line of the approaches to the bridge of the Southern Illinois and Missouri Bridge Company as located and platted, beginning at a point on the east line of fractional section 24, township thirty, range 14 east; and 1,240 feet from the S. E. corner of said fractional section; thence runs south 70 degrees 45 min. east, 765 feet; thence by one degree curve to the right 980.4 feet; thence south 59 degrees, 45 min. east, 925.8 feet; thence by a 2 degree and 30 minutes curve to the left 1,289.8 feet; thence north 87 degrees 51 minutes east, to the west bank of the Mississippi River; said center line intersects the north line of township 29 100½ feet west of the N. W. cor. of lot 2, in the N. E. ¼ of section 2, township 29, range 14 east, and also intersects the west line of said lot 269.1 feet south of the N. W. corner of said lot 2, containing 20.3 acres.

No. 2.

The court further instructs you that the plaintiff Bridge Company has the right under the law to take and appropriate said strip of ground upon paying to said defendant owners R. G. Stone, Nannie E. Finley and R. M. Finley, her husband, just compensation therefor, and that the only matter for the jury to determine in this cause is the just compensation to be paid said company to said defendants.

No. 3.

This just compensation, or in other words, the damages to which defendants are entitled, is the difference in the fair market value of defendants' whole property before and after the appropriation by plaintiff of the strip of land above described in view of the uses to which said strip condemned was to be thereafter applied.

No. 4.

The market value of the property means its actual value, independent of the location of plaintiff's bridge and approaches thereon;

that is, the fair value of the property as between one who
171 wants to purchase and one who wants to sell it, not what it could be obtained for in peculiar circumstances when greater than its fair price could be obtained, nor its speculative value; not the value obtained through the necessities of another. Nor, on the other hand, is it to be limited to that price which the property would bring when forced off at auction under the hammer. The question is if the defendants wanted to sell their property, what could be obtained for it upon the market from parties who wanted to buy and would give its full value.

No. 5.

The market value is not to be determined by the value of the strip in question to the plaintiff Bridge Company or the plaintiff's necessity of acquiring it. This consideration must in no way be allowed to affect the determination by the jury of the value of either the whole property or of the strip sought to be appropriated by the plaintiff Bridge Company in this proceeding.

No. 6.

The jury will consider the benefits, if any, and the disadvantages, if any, resulting to the remainder of defendants' said property from the appropriation by plaintiff Bridge Company, of the strip of land in question for the purpose of its bridge and approaches. The benefits to be considered and allowed by the jury are the direct and peculiar benefits, if any, which result to the remainder of defendants' said property and not the general benefits which defendants derive in common with the other land owners in the vicinity from the building of the bridge and its approaches.

To the giving of such instructions by the court, the exceptors and defendants objected and excepted at the time.

The court also refused the following instruction offered by plaintiff, number VIII:

Plaintiff's Instruction Refused.

No. VIII.

The court instructs the jury that you are to assess the damages, if you find any damages to exist in this case, to R. G. Stone and Nannie E. Finley; and in this connection, you are instructed that you are to fix the value as it existed at the date of filing of petition in condemnation, which was April 24, 1902. If, therefore, you believe and find from the evidence that on that day defendants sold the entire tract of which the lands sought to be condemned is a part, for $15,000.00, then said sum should be treated by you as
the value of the entire tract fixed by the defendants; and
172 your verdict for the defendants should be for such sum as the tract appropriated bears to the entire tract, increased by whatever sum the taking out of such land the strip appropriated

might damage the entire tract, which said sum should be decreased by any special benefits which said tract may receive by reason of the building of said bridge, approach, yards, etc., if you be—

To the court's refusing to give this instruction to jury, the plaintiff objected and excepted at the time.

And the jury, after being so instructed by the court, retired to consider the evidence, and having duly considered same and the law as declared to them by the court, returned into court the following

Verdict.

We, the jury find the defendants R. G. Stone and Nannie E. Finley, and R. M. Finley, for the appropriation of the following described real estate, situated in the County of Scott, State of Missouri, to-wit: A part of the S. E. and S. W. parts of private Survey No. 794, in twp. 30, R. 14 east, and in lot 2 of the N. E. ¼ of sec. 2, twp. 29, R. 14 east, being a tract of land 200 feet wide, 100 feet on each side of the center line of the approaches to the Southern Illinois and Missouri Bridge Co. as located and platted, beginning at a point on the east line of fractional sec. 24, twp. 30, R. 14 east, 1,240 ft. from the S. E. corner of said fractional sec.; thence run south 70 degrees 45 minutes east, 765 feet; thence by a one degree curve to the right 880 4/10 ft.; thence south 59 degrees 45 minutes east, 924 8/10 ft.; thence by a 2 degree 30 minute curve to the left, 1,289 3/10 feet; thence N. 87 degrees, 37 minutes, east to west bank of the Mississippi River. Said center line intersects the north line of twp. 29, 100½ feet west of the N. W. corner of lot 2 in the N. E. quarter of section 2, twp. 29, R. 14 E., and also intersects the west line of said lot 269 1/10 ft. south of the N. W. corner of said lot 2, have been damaged in the sum of ten thousand dollars.

T. A. MEDLEY, *Foreman.*

Judgment.

It is, therefore, considered and adjudged that defendants have and recover of and from the plaintiff the sum of ten thousand dollars as their damages by reason of the appropriation of the land in the verdict described by the plaintiff, together with the legal cost herein expended, and that therefor they have execution. It further appearing to the court that plaintiff has heretofore paid into court the sum of $8,120.00 on account of said damages; now, therefore, upon payment by the plaintiff of a further sum of $1,880.00 into court for the use and benefit of defendants, it is ordered that the easement for the use and purposes of plaintiff, its successors or assigns, for bridge approach, roadways, terminal yards and necessary appurtenances be vested in plaintiff and divested of defendants and their assigns in the real estate hereinbefore in the jury's verdict, which is made a part of this judgment and decree, fully described.

To the rendering of said judgment by the court, defendants and exceptors objected and excepted at the time.

173 That within four (4) days thereafter and on the 2nd day of July, 1903, the defendants and exceptors, with leave of court, filed their motion for a new trial in words and figures following:

Motion for New Trial.

[Caption and signatures omitted.]

Come now the defendants in the above entitled cause within four days after the return of the verdict of the jury into court, and the rendition of the judgment thereon, and pray the court to set aside said verdict and grant them a new trial for the following reasons:

First.—Because the said verdict is against the evidence.

Second.—Because the verdict is against the law and the evidence.

Third.—Because the court erred in admitting irrelevant and incompetent testimony for plaintiff over the objections of defendants.

Fourth.—Because the court erred in excluding relevant and competent testimony offered by defendants on the objections of plaintiff in this particular: that Commissioner A. J. Matthews testified that it made no difference whether the Bridge Company paid a quarter of a million dollars for a bridge site to the land owner or whether it used that sum in paying for building the bridge at a more impracticable and at a less feasible site, meaning that if the Bridge Company had to pay the land owner for such feasible site, it would benefit the land owner and not the Bridge Company, and because the court at the time of excluding such testimony announced "that the defendants could not be benefitted by such testimony, and were not entitled to the benefits of such site, although more feasible and practicable than other sites," and because the court refused to permit defendants by the commissioners to show that the line adopted by Bridge Company was more available and less expensive than any other line or site that might have been selected off of the Stone land and, on the Hobb's land north and up the river, or the Rose land south and down the river, for the reason that such testimony was incompetent to show how the commision arrived at the amount of damages fixed in their award which defendants were endeavoring to do, by such commissioners.

Fifth.—Because the court erred in excluding relevant, competent and material evidence offered by defendants on the objection of the plaintiff.

Sixth.—Because the court erred in giving instructions numbered one, two, three, four, five and six, for plaintiff over objections of defendants for the reason that said instructions were conflicting and contradictory with and to the instructions given for the defendants by the court.

174 *Seventh.*—Because the court erred in refusing instructions four, five and six, offered by the defendants.

Eighth.—Because the verdict of the jury was the result of bias and prejudice in favor of plaintiff company, and more particularly in

favor of the railroads which the testimony showed owned and controlled the bridge and its operations, and because by reason of this bias said jurors disregarded the testimony with respect to the value of the bridge site and the grounds to be used by the Bridge Company for terminal yards. And in support of this ground, reference is made to the testimony taken on the *voir dire* of said jurors which showed that they were large shippers over railroads proposing to own said bridge.

Ninth.—Because the court erred in refusing to sustain exception number one, contained in defendants' petition of exception, filed in this court on the 13th day of April, 1903, that charged that the order made in vacation appointing the commissioners, was void as a whole and made without authority of law, and more particularly charged that that part of said order which directed the commission to view and appraise the value of the strip of land to be used for railway and terminal purposes approximating in length thirty-eight hundred feet, and lying immediately west of the bridge approach proper, as fixed by the Secretary of War (in length seven hundred and twenty feet), was also void and made without authority of law, for the reason that said commissioners should have been directed to assess the damages done defendants by the condemnation of the approach proper to said bridge as above defined, and to no other portion of said strip described in said order.

Tenth.—Because the court erred in refusing to sustain exceptions two, three, seven, eight and nine, which aver and charge that the order made appointing the commissioners aforesaid, is void for the reason that the charter of plaintiff company, organized under the laws of Illinois, and which company was authorized by the Act of Congress approved January 26, 1901, to build said bridge and to establish the approaches as provided by said Act of Congress, did not authorize the making of such order as directed the condemnation of defendants' property for railroad purposes as set out in plaintiff's petition, and because said order in terms did direct said commissioners to appraise the entire strip embracing 3,800 feet beyond the approach as fixed by the Secretary of War, and in this particular said order is not definite and because said bridge company was incorporated under a Statute of Illinois referred to in its charter of Articles of Incorporation and which statute prohibited bridge companies organized under said statute from being railroad corporations and exercising the powers of railroad corporations; and because
175 the charter gave no authority for such order, and because the order was *ultra vires* the charter.

Eleventh.—Said exceptions mentioned in the last ground of this motion averred and charged that plaintiff, Bridge Company, only had power to condemn seven hundred and twenty feet as fixed by the Secretary of War, that being the lawful approach of the bridge, and a part thereof, under the law.

Twelfth.—Because under the facts as stated in the petition, the court had no authority by the order aforesaid to authorize the commission to view and appraise and report their award as to the value thereon as to a strip more than one hunrded feet wide, that being the lawful width of the right of way of a railroad, except special

facts are alleged in the petition authorizing a greater width of right of way.

Thirteenth.—Because the court refused to sustain exceptions number eighth, sixth, ninth, tenth and other like exceptions contained in defendants' petition of exceptions which aver and charge that the taking of the property by such void order was in conflict with and violated the Constitution of the United States, which provides that no person shall be deprived of life, liberty or property, without due process of law, or without the equal protection of the law as provided in Section I., Article 14 of said Constitution of the United States, and also because it violates like provisions of the Constitution of the State of Missouri.

Fourteenth.—And because the court refused to entertain and construe these constitutional objections made to such order, both Federal and State, as pointed out by defendants in their exceptions as aforesaid, as well as by their amended answer wherein such constitutional objections were specially pleaded in protection of defendants' rights in the premises.

Fifteenth.—Because the court refused to sustain exceptions as mentioned above, and especially exception number eight, that claimed the protection of the Act of Congress authorizing the construction of the bridge and relative acts thereto, and which it was the duty of the court to construe.

Sixteenth.—And because the court refused to sustain exception number nine, which avers that plaintiff Bridge Company, in attempting to enter the State of Missouri and condemn property, violated Section 962 of the Revised Statutes of 1899, and Section 8, Article 12, and also Section 7, of the same Article of the Constitution of the State of Missouri.

Seventeenth.—And because the court erred in refusing to make the Cape Girardeau and Thebes Bridge Terminal Railroad Company a party defendant, as prayed in their amended answer and in their exceptions to the commissioners' report, in order that it might defend its rights in the premises by filing the necessary pleadings and supporting the same by such testimony as it might deem proper to offer.

176

Wherefore, the defendants pray the court to grant them a new trial in this behalf.

Thereafter, said motion was taken up, argued by counsel and submitted to the court, and the court being fully advised of and concerning the same made an order overruling such motion:

"Now again come the parties by their respective attorneys and the defendants' motion for a new trial herein coming on to be heard by the court, and the court being now fully advised in the premises, all and singular, doth overrule said motion."

To said order or action of the court in overruling said motion for a new trial, defendants and exceptors objected and excepted at the time.

That on the same day, to-wit: July 2, 1903, and within four days of the trial of said cause, the defendants and exceptors filed a motion in arrest of the judgment in words and figures following:

Motion in Arrest of Judgment.

[Caption and signatures omitted.]

Come now the defendants in the above cause, and move the court to arrest the judgment rendered in said cause, and as grounds of this motion, state:

(1) Because the petition fails to state facts sufficient to authorize the court or judge in vacation to make the order appointing commissioners to view, and appraise the value of the defendants' property to be appropriated for a terminal railway and yard purposes.

(2) Because the order appointing said commissioners is void.

(3) Because the order appointing the commissioners, is void to the extent of its authorizing the commissioners to view and appraise the value of defendants' property therein described, except as to 720 feet thereof, the length of the approach to said bridge fixed by the Secretary of War, and as particularly described in defendants' exceptions to the report of said commissioners, and defendants' amended answer.

(4) Because the verdict and judgment rendered in this cause by the court seeks to appropriate the entire strip of land described in plaintiff's petition, and the order appointing commissioners is void for the reasons stated in the foregoing grounds of this motion.

Wherefore, defendants pray the court to arrest said judgment.

The court thereafter, having heard argument on said motion by counsel and being advised of and concerning the same, made this order overruling said motion in arrest, in words and figures following:

177 "Now, again come the parties by their respective attorneys and the defendants' motion in arrest of judgment herein coming on to be heard by the court, and the court being fully advised in the premises all and singular, doth overrule said motion."

To the action of the court in overruling motion in arrest, defendants and exceptors objected and excepted at the time.

Thereupon, defendants and exceptors on the 2nd day of July, 1903, filed their affidavit for an appeal to the Supreme Court of the State, and the court having seen and heard such affidavit made the following order granting defendants an appeal to the Supreme Court of the State:

"Now come the parties by their attorneys, and the court having considered the affidavit for said appeal herein filed by defendants, doth grant them an appeal to the Supreme Court of this State."

That thereupon and as part of the order made at the same time, granting the appeal, the court gave defendants and exceptors, by an order entered of record, ninety days in which to file their bill of exception:

"Now come the parties by their attorneys, and the defendants are given ninety days from this date in which to file and perfect their bill of exceptions herein."

And also made an order permitting defendants and exceptors to

file bond for an appeal in the sum of $2,000.00 *dollars*, which said bond was in due time filed and approved by the clerk of the court.

That thereafter, the official stenographer of said court not being able on account of extraordinary work in the way of making transcripts and attending courts, to make a typewritten transcript of the testimony taken in said cause, the time in which to file bill of exceptions as fixed by the court's order hereinbefore set forth, was duly extended by the following agreement (which was filed August 19, 1903, by the clerk) between the counsel in said cause, to January 1st, 1904, which said agreement is in words and figures following:

Agreement Between Counsel for the Extension of Time Within Which to File Bill of Exceptions.

This cause is now pending in the Supreme Court of the State on appeal from the Circuit Court of Dunklin County, Missouri.

Appellants having information from Mr. Will Fort, the official stenographer for the 22nd Judicial Circuit of which Dunklin County is one of the counties of that circuit, that he will not be able to furnish appellants with a typewritten copy of the testimony and record saved from his stenographer's notes at the trial of said
178 cause, so that appellants will be able to prepare their bill of exceptions from such copy of testimony to be furnished them by said stenographer, and have it settled, signed and filed within the time fixed by the order of the Circuit Court of Dunklin County, within which to file their said bill of exceptions;

It is therefore agreed herein by counsel for the respondent, Southern Illinois and Missouri Bridge Company, with counsel for appellants, Robert G. Stone, R. M. Finley and Nannie E. Finley, that the time for the filing of such bill of exceptions may be and is hereby extended to January 1, 1904, including that day.

W. H. MILLER,
Of Counsel for Respondents.
HOUCK, HOPE & SMITH,
Counsel for Appellants.

Filed Aug. 19, 1903.
W. P. FINCH, *Clerk.*

Now come the defendants and exceptors in this cause and tender to the court, this, their bill of exceptions, and pray the court that it may be signed, sealed and made a part of the record in the cause, which is accordingly done in open court on this 22nd day of December, 1903.

J. L. FORT,
Judge of the 22nd Judicial Circuit of Missouri.

And that on the 22nd day of December, 1903, the defendants and exceptors filed in open court their bill of exceptions, and the following order was made at the time:

"Now come the defendants and exceptors herein in open court, and with leave of court, file their bill of exceptions in the above entitled cause."

The foregoing is a full, correct and complete transcript of the record proper in the cause, and also the record preserved by the bill of exceptions as provided by law.

GIBONEY HOUCK,
JNO. A. HOPE,
M. R. SMITH AND
SHEPARD BARCLAY,
Attorneys for Appellants.

179 And on the same day, December 16, 1905, the said appellants filed their statement, points, brief and assignment of errors, which said assignment of errors as appears on pages 40–41–42 and 43 of said brief is in words and figures as follows, viz:

Assignments of Error.

Appellants (defendants below) in this cause of Southern Illinois & Missouri Bridge Company against R. G. Stone *et al.*, No. 12089, in the Supreme Court of Missouri, now come and aver that there is manifest error in the record, proceedings and judgment in said cause in the Circuit Court below, and in the proceedings before the judge of said court in vacation, in this to-wit:

1. The petition herein does not state facts sufficient to constitute a cause of action.

2. The petition herein does not state facts sufficient to constitute a cause of action for the condemnation of defendants' property.

3. The petition herein fails to state facts sufficient to constitute a cause of action in that it fails to aver that the property to be taken is intended for "Public use."

4. The petition herein fails to state facts sufficient to constitute a cause of action, because it shows on its face that the bridge is to be constructed under an Act of Congress, and it fails to aver the facts showing compl-ance with the terms of said Act.

5. The petition herein does not state facts sufficient to constitute a cause of action, because it affirmatively shows that some of the purposes (for which the property of defendants is alleged to be taken) are not those authorized by the Missouri Law concerning the condemnation of property for bridge approaches, namely, for "terminal yards," a purpose for which no condemnation of defendants' property is authorized.

6. The petition herein does not state facts sufficient to constitute a cause of action, because it fails to state any public necessity, or "public use" for the said property to be taken, but, on the contrary, avers the necessity to be for *"the handling of business over and across plaintiff's bridge,"* a purpose for which no condemnation proceeding is authorized by the Missouri Law concerning bridges or otherwise.

7. The verdict and judgment of condemnation are erroneous on their face, because they do not find, or adjudge as a fact that the property of the defendants, mentioned therein, is to be taken or devoted to "public use."

8. The trial court erred in overruling the motion for a new trial.

9. The trial court erred in overruling the motion in arrest of judgment.

10. Upon the undisputed facts, the judgment is erroneous, and without legal support.

180 11. The Court erred in admitting incompetent and irrelevant evidence on behalf of plaintiff.

12. The Court erred in excluding competent and relevant testimony offered on behalf of defendants.

13. The Court erred in excluding the evidence of the injunction.

14. The Court erred in giving Instruction No. 1 on behalf of plaintiff.

15. The Court erred in giving Instruction No. 2 on behalf of plaintiff.

16. The Court erred in giving Instruction No. 3 on behalf of plaintiff.

17. The Court erred in giving Instruction No. 4 on behalf of plaintiff.

18. The Court erred in giving Instruction No. 5 on behalf of plaintiff.

19. The Court erred in giving Instruction No. 6 on behalf of plaintiff.

20. The Court erred in refusing the request for instruction for defendants No. 4.

21. The Court erred in refusing the request for instruction for defendants No. 5.

22. The Court erred in refusing the request for instruction for defendants No. 6.

23. Under the Constitution of the United States which makes the Acts of Congress the supreme law of the land (Const. U. S., Art. 6) and the action of the Secretary of War under the Act in this case, there was no power in the Courts of Missouri to condemn the strip of land of the defendants described in the judgment herein, beyond seven hundred and twenty (720) feet from the Mississippi River on the Missouri side.

24. The Circuit Court erred in submitting the cause to the jury, under the documentary and undisputed evidence to the effect that plaintiff has not complied with the Act of Congress of January 26, 1901, which alone authorizes the construction of said bridge.

25. The judgment of the Circuit Court in this cause in an invasion of the rights, privileges and immunities of defendants under the 14th Amendment of the Constitution of the United States, declaring that no person shall be deprived of property without due process of law.

26. The judgment of the Circuit Court in this cause is an invasion of the rights, privileges and immunities of defendants under the Constitution of the United States, in that said Circuit Court refused to give paramount force to the Act of Congress in

181 evidence, approved January 26th, 1901, and thereby the Circuit Court refused to give defendants the benefit of the Constitution of the United States and Article 6 thereof, declaring that said Constitution and the laws of the United States made in pursuance thereof shall be the supreme law of the land.

27. The judgment of the Circuit Court in this cause is an invasion of the rights, privileges and immunities of defendants under the Constitution of the United States, in that said Circuit Court refused to give effect to the 5th Amendment and 14th Amendment of the Constitution of the United States, declaring that private property shall not be taken for public use without just compensation, or without due process of law.

28. The judgment of the Circuit Court in this cause is an invasion of the rights, privileges and immunities of defendants under the Federal Constitution because said judgment does not accord supreme effect to the Act of Congress aforesaid.

29. The trial court erred in permitting the compensation, which defendants were to be paid for their land, to be reduced by supposed "benefits" to other land of defendants, contrary to the terms of the Constitution of Missouri and to the provisions of the Federal Constitution above cited.

For the foregoing prejudicial errors, and each of them, affecting the merits of this cause, appellants pray this Court to reverse the judgment of the said Circuit Court.

GIBONEY HOUCK,
JOHN A. HOPE,
M. R. SMITH,
SHEPARD BARCLAY,
Attorneys for Appellants.

And afterwards, to-wit, on the 28th day of December, 1905, the said respondent filed its statement, brief and argument in this cause.

And afterwards to-wit, on the 3rd day of January, 1906, the following proceedings were had in said cause, viz:

So. Ill. & Mo. Bridge Co., Resp.,
v.
R. G. Stone et al., App.

Comes now the said respondent by attorney, and files its motion to transfer this cause to the Court in Banc, which said motion
182 being fully considered by the court, it is ordered that said motion be sustained.

Which said motion to transfer this cause to the Court in Banc is in words and figures as follows, to-wit:

In the Supreme Court of Missouri, to October Term, 1905.

No. 12089.

SOUTHERN ILLINOIS & MISSOURI BRIDGE COMPANY, Respondent,
vs.
R. G. STONE, R. M. FINLEY, and NANNIE E. FINLEY, Appellants.

Motion to Transfer to Court En Banc.

The respondent comes now and moves the Court to transfer this cause from Division No. 1 to the Court En Banc and for cause of this motion assigns the following reasons.

First. This is the second appeal in this cause. The former one having been argued and determined by Court En Banc at its October Term, 1902.

Second. By this appeal Appellants seeks to have this court review and reverse its finding and decree entered on the former appeal.

Third. On the former appeal this cause was remanded with specfic directions which said directions have been strictly carried out by the Court below, and it is now sought to review the judgment of the Lower Court, which was entered in strict compliance with the orders of the Court En Banc.

Respondent, therefore, prays that this cause may be transferred because of the great magnitude of the interest involved and because of the fact that the full court passed upon the former appeal and should pass upon this.

Respectfully,

W. H. MILLER,
Att'y for Respondent.

A. G. COCHRAN,
Of Counsel.

183 Re'd a copy of this motion this 22nd day of Dec., 1906.
BARCLAY, SHIELDS & FAUNTLEROY,
Of Counsel for Appellant.

And afterwards to-wit, on the 19th day of January, 1906, the further following proceedings were had in said cause, viz:

So. ILL. & MO. BRIDGE CO., Resp.,
v.
R. G. STONE ET AL., App.

Come now the said parties by attorneys, and after arguments herein, submit this cause to the court with 10 days' leave to said parties to file additional briefs.

And on the same day, January 19, 1906, the said appellants filed their reply brief herein.

And afterwards to-wit, on the 26th day of February, 1906, the further following proceedings were had in said cause, viz:

SOUTHERN ILLINOIS & MISSOURI BRIDGE COMPANY, Respondent,
vs.
R. G. STONE, NANNIE E. FINLEY, and R. M. FINLEY, Appellants.

Appeal from Dunklin County Circuit Court.

Now at this day, come again the parties aforesaid, by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Dunklin County Circuit Court rendered, be in all things affirmed and stand in full force and effect; and that the said respondent recover against the said appellants its costs and charges herein expended, and have therefor execution. (Opinion filed.)

Which said opinion is in words and figures as follows, to-wit:

In the Supreme Court of Missouri In Banc, October Term, 1905.

184 (No. 12089.)

SOUTHERN ILLINOIS & MISSOURI BRIDGE COMPANY, Respondent,
v.
R. G. STONE, R. M. FINLEY, and NANNIE E. FINLEY, Appellants.

This case was before this court on a former appeal (174 Mo. 1), wherein a full and fair statement of the facts in the case, as disclosed by the record, was given. The case was then before us on plaintiff's appeal. The judgment of the court below was reversed and the cause remanded, with directions to the court to appoint a commission, as the law required, for the purpose of assessing the damages to the defendant, the said commission to forthwith report its finding to the circuit court in which the proceeding was pending, to the end that the bridge company might take possession of the property and proceed with its work. This commission, acting in accordance with the directions of the court, viewed the property sought to be condemned, and on the 10th day of April, 1903, filed its report, whereby it assessed the damages of defendant at $8,120.00. This sum was immediately deposited by the plaintiff with the clerk of the circuit court of Dunklin county, and thereupon plaintiff entered into possession of the premises and, in pursuance of the order and judgment of this court and the report of the commissioners, expended a very large sum of money. In due time defendants filed their exceptions to the commissioners' report and, before the trial, filed what they termed an amended answer, in which substantially the same grounds are urged as in the original answer and as shown by the exceptions to the commissioners' report. Upon trial of the issues presented, the jury returned into court a verdict in favor of defendant for the sum of $10,000.00. A judgment of condemnation was entered accordingly and plaintiff immediately deposited a further sum of $1,880.00 with the clerk of the circuit court of Dunklin county, making a total of $10,000.00, and in

addition thereto paid all the costs which had accrued in said
185 cause up to and including that transaction. The defendants, on behalf of the Cape Girardeau & Thebes Bridge Terminal Company, immediately filed a motion in the circuit court of Dunklin county, asking an order directing the sum of money so deposited with the clerk to be paid over to it, which motion was granted and the order entered of record. From the judgment of condemnation thus entered this appeal is now prosecuted on behalf of the defendants to this court, in which it is sought to review not only the proceedings of the court on the last trial in the assessment of damages, but the entire proceedings from the inception to the close of the case.

The plaintiff contends now that if there ever was a Federal question involved in this case it was involved as much in the former appeal as it is now, and the defendants having failed to take any steps to have these questions reviewed by a Federal tribunal cannot now do so, because all of the matters and things therein contained are *res adjudicata*, and under no circumstances can be re-opened in the same case. Plaintiff further contends that the only questions open to review on this appeal are those raised on the trial in the circuit court on the question of damages, as all the other questions involved were adjudicated on the former appeal.

There was much testimony adduced on the question of values, as bearing on the amount of damages to which defendants were entitled on account of the condemnation of their property.

At the instance of plaintiff, and over the objection and exception of defendants, the court instructed the jury as follows:

"The court instructs the jury that on the 24th day of April, 1902, at 10:40 o'clock a. m., the Southern Illinois and Missouri Bridge Company as plaintiff, filed in the Circuit Court of Scott County, Missouri, its petition against R. G. Stone, Nannie Finley and R. M. Finley, her husband, as owners, and Birgehardt Miller, Perry Bates and David Heldt, as occupying tenants, seeking to condemn for public use in connection with its bridge a strip of ground 200 feet wide and about 4,500 feet long, then owned by the said R. G.
186 Stone, Nannie E. Finley and R. M. Finley, her husband, more particularly described as follows: A part of the S. E. and S. W. parts of private survey No. 794 in township thirty range fourteen east; and in lot 2, of the N. E. ¼ of sec. 2, township 29, range 14 east; being a tract of land 200 feet wide, one hundred feet on each side of the center line of the approaches to the bridge of the Southern Illinois and Missouri Bridge Company as located and platted, beginning at a point on the east line of fractional section 24, township thirty, range 14 east; and 1,240 feet from the S. E. corner of said fractional section; thence runs south 70 degrees 45 Min. east 765 feet; thence by one degree curve to the right 980.4 feet; thence south 59 degrees, 45 min. east, 925.8 feet; thence by a 2 degree and 30 minutes curve to the left 1,289.8 feet; thence north 87 degrees 51 minutes east, to the west bank of the Mississippi River; said center line intersects the north line of township 29 100½ feet west of the N. W. cor. of lot 2, in the N. E. ¼ of section 2, township 29,

range 14 east, and also intersects the west line of said lot 269.1 feet south of the N. W. corner of said lot 2, containing 20.3 acres.

2.

The court further instructs you that the plaintiff Bridge Company has the right under the law to take and appropriate said strip of ground upon paying to said defendant owners R. G. Stone, Nannie E. Finley and R. M. Finley, her husband, just compensation therefor, and that the only matter for the jury to determine in this cause is the just compensation to be paid by said company to said defendants.

3.

This just compensation, or in other words, the damages to which defendants are entitled, is the difference in the fair market value of defendants' whole property before and after the appropriation by plaintiff of the strip of land above described in view of the uses to which said strip condemned was to be thereafter applied.

4.

187 The market value of the property means its actual value, independent of the location of plaintiff's bridge and approaches thereon; that is, the fair value of the property as between one who wants to purchase and one who wants to sell it; not what it could be obtained for in peculiar circumstances when greater than its fair price could be obtained, not its speculative value; not the value obtained through the necessities of another. Nor, on the other hand, is it to be limited to that price which the property would bring when forced off at auction under the hammer. The question is if the defendants wanted to sell their property, what could be obtained for it upon the market from parties who wanted to buy and would give its full value.

5.

The market value is not to be determined by the value of the strip in question to the plaintiff Bridge Company or the plaintiff's necessity of acquiring it. This consideration must in no way be allowed to affect the determination by the jury of the value of either the whole property or of the strip sought to be appropriated by the plaintiff Bridge Company in this proceeding.

6.

The jury will consider the benefits, if any, and the disadvantages, if any, resulting to the remainder of defendants' said property from the appropriation by plaintiff Bridge Company, of the strip of land in question for the purpose of its bridge and approaches. The benefits to be considered and allowed by the jury are the direct and peculiar benefits, if any, which result to the remainder of defendants' said property and not the general benefits which defendant's derive in common with the other land owners in the vicinity from the building of the bridge and its approaches.

At the request of defendants, the court further instructed the jury as follows:

1.

GENTLEMEN OF THE JURY:

It is your duty to assess the damages which you may believe from the evidence defendants will sustain on account of the appro-
188 priation by the plaintiff of the land involved herein.

And in assessing said damages you will be governed by the following rules, viz:

You will consider the quantity and value of the land to be taken and the damages to the whole tract by reason of the construction of plaintiff's bridge and approach.

Value, as used in these instructions, means market value, but you are further instructed that the market value is not what it will sell for a forced sale, but it is the highest price it will bring in the hands of a prudent seller in view of all the uses and purposes for which the land is adapted; and if you believe from the evidence that said land is located so as to be eligible as a site for a bridge across the Mississippi River or so as to be adapted for use as a terminal railway, or other valuable use, then in making your estimate of its value, you should consider all such advantages and capabilities of said land, together with whatever superiorities in these respects, if any, over other lands in the vicinity.

2.

The court instructs the jury, that under the testimony in this cause, the date of the assessment of the damages by the commissioners will be taken as the date of the appropriation by plaintiff of the land sought to be condemned herein. And whatever sum you may find the property taken by the plaintiff at that time to be worth, according to the rules of fixing damages, as mentioned in these instructions, will be the amount of said damages, whatever it may be, and should be returned by your verdict.

3.

The Court instructs the jury that the consideration shown by the deeds offered in evidence, either for plaintiff or defendants, is not binding on either of said parties, but only circumstances to be considered in connection with the other testimony offered in this cause, by the jury in arriving at its verdict, and you are also instructed that the considerations in said deeds may be explained by testimony which you will also consider in your verdict, provided any
189 such testimony or explanation was offered."

It is claimed by defendants that the petition is fatally defective in that it fails to allege that the land sought to be condemned is to be acquired for public use. But the sufficiency of the petition and all other questions presented by the record on this appeal, up to the time of the decision of the court on the former appeal, were passed upon in the opinion then delivered, and have become *res adjudicata*. On the former appeal, the judgment was reversed and the cause remanded with specific directions, as before stated, and under such circumstances the mandate must be strictly

pursued, all matters included therein being *res adjudicata* and cannot be reopened. (Stump *vs.* Hornbeck, 109 Mo. 272; Hurck *vs.* Erskine, 50 Mo. 116; Shroyer *vs.* Nickell, 67 Mo. 589; Chouteau *vs.* Allen, 74 Mo. 59; State *ex rel. vs.* Givan, 75 Mo. 517; State *ex rel. vs.* Edwards, 144 Mo. 467; Carey *vs.* West, 165 Mo. 452; Baker *vs.* Railway, 147 Mo. 140; Overall *vs.* Ellis, 78 Mo. 209; Chapman *vs.* Railway, 140 Mo. 481; Reese *vs.* McDaniel, 131 Mo. 681; Tourville *vs.* Railroad, 148 Mo. 614; Riley *vs.* Sherwood, 155 Mo. 37.

In the case of Metropolitan Bank *vs.* Taylor, 62 Mo. 338, it is said: "When the case of Roberts *vs.* Cooper, (20 How. 467) was before the Supreme Court of the United States the second time, after it had been tried in the circuit court on the principles established by the Supreme Court in the first trial, it was decided that the court could not be compelled, on a second writ of error in the same case, to review their decision on the first; that after a case had been brought there and decided, and a mandate issued to the court below, if a second writ of error was sued on, it brought up for review nothing but the proceedings subsequent to the mandate; that none of the questions which were before the court on the first writ of error could be reheard or examined upon the second, and to allow a second writ of error or appeal to a court of last resort on the same questions which were open to dispute in the first would lead to endless lit-gation; for there would be no end to a suit if every lit-gant could by repeated appeals compel a court to listen to criti-
190 cisms on their opinions, or speculate on chances from changes in its members."

There are several errors assigned by defendants which are claimed to have occurred after the judgment was reversed and the cause remanded to be proceeded with as directed by this court. The first of these is as to the appointing, in vacation, commissioners to assess the damages, when the mandate of this court directed the lower court to appoint commissioners. The contention is that when directions are given by a court to do an act, which under the express terms of the law may be done either by the "court" or by "the judge in vacation," such directions are distinct orders for the court to act, and bar action by the judge thereof; that where the law, or the order of a higher court, requires action by a circuit court, such action cannot properly be taken by the judge in vacation. This objection seems to us to be without merit, and for the following reasons: In the first place, the statute (sec. 1266, R. S. 1899) authorizes the circuit court, or judge thereof in vacation, to appoint such commissioners, and we do not think the mandate, while it directed the court to appoint the commissioners, had the effect of prohibiting the judge from so doing; and his appointment of them was a substantial compliance with the mandate and an exercise of the power conferred upon him by statute. In the next place, upon exceptions filed by defendants to the report of the commissioners, the case was tried before a jury who found that defendants' property had been damaged in the sum of ten thousand dollars, for which sum, and costs of suit, judgment was thereafter rendered in their favor against the plaintiff. So that defendants have no

right whatever to complain of the manner in which the commissioners were appointed.

Under the facts disclosed by the record, we do not think the Cape Girardeau & Thebes Terminal Railroad a necessary party to this litigation, hence no error was committed in refusing it to become a party defendant.

It is said for defendants that the trial court committed error in permitting the plaintiff to introduce and read in evidence
191 the official document and record reciting the fact of the appointment of commissioners and their award of damages in the sum of $8,120.00. But this seems to be a misapprehension of the facts disclosed by the record, which shows that when Mr. Miller, attorney for plaintiff, offered in evidence the order made on the 24th of March, 1903, appointing commissioners to assess the damages to the defendants, R. G. Stone, R. M. Finley and Mrs. Finley, an objection was interposed by counsel for defendants to the effect that the order was void upon the ground that the court was without authority to make it, and that it was irrelevant, immaterial and incompetent, and did not tend to prove any issue in the case. The objection was overruled, and defendants saved exception. The notice to the attorney for defendants of the purpose of plaintiff to make application to Judge Fort, at the time and place therein named, for the appointment of commissioners to assess the damages, if any, growing out of the appropriation of the land in the petition described, the order appointing them, their report, together with the amount of damages fixed by the report, were all admitted in evidence without objection. The objection interposed went no further than to the order appointing commissioners to assess the damages, and it follows that there was no foundation for this contention.

Defendants assert that there was no evidence that plaintiff endeavored to agree with them or either of them as to the price to be paid for said property, and intimates that there was no averment in the petition as to a failure to agree upon the price or compensation to be paid therefor, and that, therefore, the court was without jurisdiction of the case. The petition alleges that the "petitioner has endeavored to agree with defendants and each of them upon the price to pay for said property, but has been unable to amicably settle or to agree at all upon a proper compensation to either of the parties defendant." That the court had jurisdiction of the parties and the subject matter of the controversy clearly appears from the record, and even were it true that there was no evidence in support of this allegation such fact would not oust the court of its jurisdiction. Nor was it necessary for plaintiff "to sustain
192 this averment of the petition by oral testimony," (Corey *vs.* The Chicago B. & K. Ry. Co., 100 Mo. 282), but might be done by facts and circumstances, of which here was an abundance in this case to show that no efforts, however strenuous, upon the part of the plaintiff, would have resulted in such agreement.

The sixth instruction given for plaintiff is criticised upon the ground that it permitted a reduction of the compensation to defendants for the taking of their land by "benefits" supposed to be con-

ferred on the remainder of defendants' "property" by the bridge approaches. This question has been adjudicated adversely to defendants' contention upon several different occasions, as will appear from the decisions of this court to be noted. In Combs *vs.* Smith, 78 Mo. 32, it is held that the benefits for which a railroad company are entitled to be allowed in establishing the damages sustained by a land owner by reason of the appropriation of his land for the road, are such as the land derives from the location of the road through it, and are not enjoyed by other lands in the same neighborhood. (Newby *vs.* Platte County, 25 Mo. 544; St. Louis & St. Joseph R. R. Co. *vs.* Richardson, 45 Mo. 466; Railroad *vs.* Stock Yards, 120 Mo. 521; Railroad *vs.* Knapp, Stout & Co., 160 Mo. 396.) And the benefits peculiar to that portion of the property which is not taken, and which are not common to the public at large, may be set off against the damages assessed for the appropriating of the property. This rule was not changed by the Constitution of 1875. (Dougherty *vs.* Brown, 91 Mo. 26; Kansas City *vs.* Martin, 117 Mo. 446; Lingo *vs.* Burford, 112 Mo. 149; Bennett *vs.* Hall, 184 Mo. 407.)

While we recognize the right as well as the duty of this court to change its former ruling in the same case in order to correct or render harmless any error therein, it will only do so when it becomes satisfied that error was committed, or for some reason more cogent than is presented by the record in this case. The former opinion was well considered, as was every phase of the case then presented by the record. It is, we think, in no way erroneous, and should
193 not, therefore, be disturbed. The act of congress authorizing the construction of the bridge was passed January 26, 1901, and provides that the construction thereof should be commenced within one year, and completed within three years, after the passage of the act, and if not completed within that time, the act should become null and void and all the rights conferred thereby cease and determine. The presumption will be indulged that it was completed within the time specified, and that plaintiff, relying upon the former decision of this court, expended a vast amount of money in the construction of said bridge and approaches, which, in the event said decisions were overruled, could but result in great injury to plaintiff and other investors who acted upon the faith of that decision. We might, therefore, predicate our declination to overrule that decision upon the doctrine of *stare decisis,* but do not invoke that doctrine; nor do we thing it at all necessary to the conclusion which we have reached, which is that the judgment should be affirmed. It is so ordered.

Marshall, Gantt, Fox, Lamm, J. J. concur. Brace, C. J., Valliant J. dissent upon the ground expressed in the dissenting opinion in the former appeal.

G. D. BURGESS, *J.*

And afterwards, to-wit, on the 3rd day of March, 1906, the further following proceedings were had in said cause, viz:

So. ILL. & MO. BRIDGE CO., Resp.,
v.
R. G. STONE ET AL., App.

Come now the said appellants by attorney, and file their motion for a rehearing herein.

Which said motion for rehearing is in words and figures as follows, to-wit:

No. 12089.

In the Supreme Court of Missouri, October Term, 1905.

194 SOUTHERN ILLINOIS & MISSOURI BRIDGE COMPANY, Respondent,
vs.
R. G. STONE, R. M. FINLEY, and NANNIE E. FINLEY, Appellants.

Appellants' Motion for Rehearing.

Now come appellants, by their attorneys, in the above entitled cause and move the Court to grant to appellants a re-hearing of their appeal to this Court because certain questions decisive of the case and duly submitted by counsel have been overlooked by the Court, and because the decision is in conflict with express statutes Federal and State and with controlling decisions with which the learned opinion handed down on behalf of the majority of the Court does not harmonize; and for particular specification of the reasons for this motion, appellants assign the following grounds thereof:

1. The learned opinion of the majority of the Court states that:

"The defendants, on behalf of the Cape Girardeau & Thebes Bridge Terminal Company, immediately filed a motion in the Circiut Court of Dunklin county, asking an order directing the sum of money so deposited with the clerk to be paid over to it, which motion was granted and the order entered of record." (See carbon copy of opinion, page 1, three lines from bottom of page, and page 2, first three lines from top of page.)

Appellants respectively submit that the printed Abstract of Record which constitutes the record in this Court does not show the facts as above recited. The statement thereof in the learned opinion is, no doubt, inadvertently an error. Appellants ask a rehearing in order that said statement may be corrected, as it is prejudicial to the substantial rights of appellants, and the learned opinion has evidently overlooked the condition of the record in this Court in that part of the opinion referred to. The printed Abstract will furnish
195 the facts under review as the case is here on a short certificate and not on a full transcript;

2. Because the learned opinion of the majority of the Court does not discuss the largest question involved in the case which is whether there is jurisdiction of the subject matter in this cause (a suit for condemnation) in view of the fact that the Federal statutes invoked by appellants limit the right to appropriate the real property of the

appellants to the physical limits prescribed by the map of the bridge and its approaches approved by the Board of Engineers under the Act of Congress approved January 26, 1901, offered in evidence in the trial court;

3. Because the learned opinion of the majority of this Court denies to appellants rights, privileges and immunities, claimed by them under the Constitution of the United States (Article 6) which makes the Acts of Congress the Supreme law of the land, and under the Acts of Congress regulating the construction of bridges across the Mississippi river (30 U. S. Stat. L., p. 1151, sec. 9) and under the particular Act of Congress, approved January 26, 1901, authorizing the construction of a bridge across the Mississippi at or near Gray's point, which prescribed the terms and conditions on which alone the right to construct such a bridge was granted:

4. Because the learned opinion of the majroity of the court falls inadvertantly into error in denying to appellants the equal protection of the law and due process of law as guaranteed by the 14th Amendment to the Federal Constitution and in overruling the 27th assignment of error filed in this Court heretofore;

5. The learned opinion of the majority of the Court falls inadvertently into error in denying to appellants the rights, privileges and immunities accorded to them by the 5th Amendment to the Constitution of the United States, declaring that private property shall not be taken for public use without just compensation;

6. Because the learned opinion of the majority of the Court falls into error inadvertently in holding that the plaintiff is authorized to condemn property as a part of the bridge authorized by the
196 aforesaid Act of Congress, beyond the lines defined by the said Act of Congress and the map approved by the Secretary of War under said Act of Congress;

7. Because the learned opinion of the majority of the Court falls into error inadvertently in denying to appellants the rights accorded to them by the aforesaid Act of Congress approved January 26, 1901, whereby the right to commence the erection of said bridge structure was limited to one year "from the date of the approval" of said Act, and the undisputed evidence in this record shows that the construction of said bridge was not commenced within that period; and the learned opinion of the majority of the Court does not even allude to that point which was made with great distinctness in appellants' Brief in this Court (p. 50) but it holds that the bridge "was completed within the time specified," as to which proposition we do not ask a review.

8. The learned opinion of the majority of the Court denies to appellants immunity from condemnation of their real property in this case which immunity is afforded to them by the Constitution of the United States (as mentioned in appellants' assignments of error) in that the learned opinion of the majority of the Court does not discuss the point made by appellants to the effect that the extent to which the bridge might go under the Act of Congress was marked by the map approved by the Board of Engineers of the United States and the Secretary of War under the Act of Congress authorizing the construction of a bridge at the point in question;

9. Because the appellants have been denied the rights and immunities claimed by them in each of their assignments of error on that subject in this Court, which assignments of error have been overruled in the learned opinion of the majority of the Court.

For the foregoing reasons appellants pray that a re-hearing be granted to them, to the end that they may more fully present to this Court the several points made by them heretofore which have
197 not been discussed in the learned and Honored opinion of this court.

Respectfully submitted.

GIBONEY HOUCK,
JNO. A. HOPE,
M. R. SMITH,
SHEPARD BARCLAY,
Attorneys for Appellants.

And afterwards to-wit, on the 10th day of March, 1906, the further following proceedings were had in said cause, viz:

So. Ill. & Mo. Bridge Co., Resp.,
v.
R. G. Stone et al., App.

Now at this day, the court having fully considered and understood the motion heretofore filed for a rehearing herein, doth order that said motion be, and the same is hereby overruled.

And afterwards to-wit, on the 15th day of March, 1906, the further following proceedings were had in said cause, viz:

Southern Illinois & Missouri Bridge Company, Respondent,
vs.
R. G. Stone, Nannie E. Finley, and R. M. Finley, Appellants.

Now at this day, there is presented to the Honorable Theodore Brace, Chief Justice of the Supreme Court of the State of Missouri, in Chambers, a petition for writ of error to the Supreme Court of the United States, a writ of error to the Supreme Court of the United States, a citation directed to said respondent, citing and admonishing it to appear at a Supreme Court of the United States on the 14th day of April, 1906, and an assignment of errors; which said petition for a writ of error is allowed, and which said writ of error is allowed. said citation signed, said assignment of errors filed and an order of said Chief Justice filed fixing the amount of the bond herein at the sum of $5,000.

198 Which said petition for a writ of error is in words and figures as follows, to-wit:

In the Supreme Court of Missouri, October Term, 1905.

No. 12089.

SOUTHERN ILLINOIS & MISSOURI BRIDGE COMPANY, Respondent,
vs.
R. G. STONE, R. M. FINLEY, and NANNIE E. FINLEY, Appellants.

Petition for Writ of Error.

To the Honorable the Judges of the Supreme Court of the United States or to Any of the Associate Judges Thereof or to the Chief Justice of the Supreme Court of the State of Missouri:

Come now the above named defendants, appellants in the Supreme Court of the State of Missouri, by their attorneys, and complain:

That in the record and proceedings had in said cause of Southern Illinois & Missouri Bridge Company, Respondent, *vs.* R. G. Stone, R. M. Finley and Nannie E. Finley, Appellants, No. 12089, in the Supreme Court of Missouri, and also in the rendition of the judgment in the above entitled cause in the Circuit Court of the State of Missouri in and for the County of Dunklin, Missouri, as shown by the record in said cause, manifest error has happened to the great damage of said defendants (appellants in said Supreme Court of Missouri); and that said error in the judgment of each and both of said State courts consisted in the denial of title, rights and immunities expressly claimed by said defendants (appellants) under the constitution and laws of the United States, and in the affirmance of the validity of statutes and authority exercised under the laws of Missouri which statutes and authority were expressly drawn
199 in question by said defendants (appellants) in the record and proceedings therein on the ground of their repugnancy to the constitution and laws of the United States; and that the said Supreme Court of Missouri, in whose record and judgment the aforesaid errors appear, is the highest court of law or equity in the said State of Missouri in which a decision could be had in said suit between the parties thereto aforesaid;

Wherefore said defendants, by their attorneys, pray for the allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Missouri, and for an order fixing the amount of bond for supersedeas in said cause and for such other orders and proceedings as may cause the manifest errors in said cause to be corrected by the said Supreme Court of the United States of America.

Dated this 15th day of March, 1906.

SHEPARD BARCLAY,
Attorney for said Defendants, Appellants.

The foregoing petition for writ of error in the cause above entitled is hereby allowed, this 15th day of March, 1906.

THEODORE BRACE,
[SEAL.] *Chief Justice of the Supreme Court of the State of Missouri.*

Attest, the Seal of said Court:

JNO. R. GREEN,
Clerk of the Supreme Court of the State of Missouri.

200 And which assignment of errors is in words and figures as follows, to-wit:

UNITED STATES OF AMERICA, *ss:*

In the Supreme Court of the United States.

(No. 12089 in the Supreme Court of Missouri.)

R. G. STONE, R. M. FINLEY, and NANNIE E. FINLEY, (Appellants), Plaintiffs in Error,

vs.

SOUTHERN ILLINOIS & MISSOURI BRIDGE COMPANY, (Respondent), Defendant in Error.

Assignment of Errors by Plaintiffs in Error.

Now come R. G. Stone, R. M. Finley and Nannie E. Finley, Appellants in the Supreme Court of Missouri and plaintiffs in error in a writ of error to the Supreme Court of Missouri from the Supreme Court of the United States, duly allowed, in the above entitled cause of Southern Illinois & Missouri Bridge Company (Respondent) and defendant in error ads. R. G. Stone, R. M. Finley and Nannie E. Finley (appellants) in said Supreme Court of Missouri, and plaintiffs in error in said writ of error in the Supreme Court of the United States in said cause, and upon a judgment in the Supreme Court of Missouri at the October term thereof, A. D. 1905, in the above entitled cause, the said R. G. Stone, R. M. Finley and Nannie E. Finley, defendants and appellants in the Supreme Court of Missouri and plaintiffs in error in said writ of error returnable into the Supreme Court of the United States, according to law, do say, by their attorneys and counsel in this behalf, that, in the record and proceedings in said cause there is manifest error to their prejudice upon the merits of said cause, and they assign error in said record and proceedings in this to-wit:

1. That said Supreme Court of Missouri erred in affirming the judgment of the Circuit Court of Dunklin County, Missouri,
201 and in overruling each of the assignments of error of said plaintiffs in error in said Supreme Court;

2. That the learned opinion of the Supreme Court of Missouri erred in denying to appellants rights, privileges and immunities claimed by them under the Constitution of the United States (Article 6) which makes the Acts of Congress the Supreme law of the land, and under the Acts of Congress regulating the construction of bridges, across the Mississippi river (30 U. S. Stat*e* L., p. 1151, sec. 9) and under the particular Act of Congress, approved January 26, 1901, authorizing the construction of a bridge across the Mississippi at or near Gray's point, which prescribed the terms and conditions on which alone the right to construct such a bridge was granted;

3. That the learned opinion of the said Supreme Court of Missouri erred in denying to appellants the equal protection of the law and due process of law as guaranteed by the 14th Amendment to the

Federal Constitution and in overruling the 27th assignment of error filed in this Court heretofore, as follows:

"The judgment of the Circuit Court in this cause is an invasion of the rights, privileges and immunities of defendants under the Constitution of the United States, in that said Circuit Court refused to give effect to the 5th Amendment and 14th Amendment of the Constitution of the United States, declaring that private property shall not be taken for public use without just compensation, or without due process of law."

4. That the learned opinion of the said Supreme Court of Missouri is erroneous in denying to appellants the rights, privileges and immunities accorded to them by the 5th Amendment to the Constitution of the United States, declaring that private property shall not be taken for public use without just compensation, by affirming the judgment of the Circuit Court of Dunklin County, Mo., to the same purport.

5. That the learned opinion of the said Supreme Court of Missouri is erroneous in holding that the plaintiff is au-
202 thorized to condemn property as a part of the bridge authorized by the aforesaid Act of Congress, beyond the lines defined by the said Act of Congress and by the map approved by the Secretary of War under said Act of Congress, and in affirming the judgment of the Circuit Court below to that effect;

6. Because the learned opinion of the said Supreme Court of Missouri is erroneous in denying to appellants the rights accorded to them by the aforesaid Act of Congress approved January 26, 1901, whereby the right to commence the erection of said bridge structure was limited to one year "from date of the approval" of said Act, and the undisputed evidence in this record shows that the construction of said bridge was not commenced within that period; and the learned opinion of the said Missouri Supreme Court does not even allude to that point which was made with great distinction in appellants' Brief in said Court (p. 50) but in affirming the judgment of the Circuit Court below it denies to appellants (plaintiffs in error) the rights to which they are entitled under said Act of Congress;

7. The learned opinion of the said Supreme Court of Missouri denies to appellants the immunity claimed by them from condemnation of their real property in this case, which immunity is afforded to them by the Constitution and laws of the United States in that the said learned opinion of the said Missouri Supreme Court does not grant but denies the contention made by appellants to the effect that the extent to which the said bridge might reach, under the said Act of Congress, approved January 26, 1901, was marked by the map approved by the Board of Engineers of the United States and the Secretary of War under the Act of Congress authorizing the construction of a bridge at the point in question;

8. That the circuit (trial) court below erred in refusing to declare the law as requested in the following instruction, asked by defendants (appellants) at the trial, to-wit:

"The court instructs the jury that plaintiff, under its charter and the Act of Congress authorizing it to build the bridge and
203 approaches thereto, in view of the testimony submitted in the cause, has only power to appropriate to its use a strip of land

extending westward to the bluff, for a distance of seven hundred and twenty (720) feet, for the Western approach of its bridge (and the width thereof to be two hundred feet), this being the length of the approach as fixed by the Secretary of War, it being his duty by the terms of said Act of Congress to ascertain and fix the length of said approach.

And you are further instructed that you will fix and assess such damages in favor of the defendants against plaintiff, for said strip of land, as you may consider they have sustained by reason of the appropriation thereof."

And that the Supreme Court of Missouri erred in affirming said ruling by affirming said judgment of said circuit court, and thereby depriving appellants (defendants) of their rights under the Constitution and Acts of Congress of the United States claimed at the time by appellants in said circuit court and in said Supreme Court of Missouri.

9. That the circuit court below erred in said cause by assuming jurisdiction to condemn and to appropriate the land of defendants (appellants) beyond the limits defined for said bridge and its approaches by the Act of Congress of the United States, approved January 26, 1901, and beyond the limits therefor fixed by the map approved by the Secretary of War, pursuant to said Act of Congress; and the Supreme Court of Missouri erred in affirming in that particular the decision and judgment of said circuit court.

10. That said circuit court below erred in said cause by deciding adversely to the second defense set up in defendants' (appellants') amended answer, which defense in substance asserted the claim of said defendants to immunity from having their said land (condemned by the proceedings herein) subjected to appropriation against their will, and invoked the federal statute authorizing the construction of said bridge (approved January 26, 1901, and the map (approved thereunder by the Secretary of War) as a bar to the taking of
204 their land for a bridge approach beyond the line marked therefor by said map on the Missouri side of the River; and the Supreme Court of Missouri erred in affirming said ruling and decision of said circuit court to that effect, and thereby depriving appellants and defendants of rights, secured to them by said Act of Congress.

11. That the said circuit (trial) court erred in said cause by giving the following instruction asked by plaintiff (respondent) against the objection and exception of defendants (appellants), to-wit:

"The jury will consider the benefits, if any, and the disadvantages, if any, resulting to the remainder of defendants' said property from the appropriation by plaintiff Bridge Company, of the strip of land in question for the purpose of its bridge and approaches. The benefits to be considered and allowed by the jury are the direct and peculiar benefits, if any, which result to the remainder of defendants' said property and not the general benefits which defendants derive in common with the other land owners in the vicinity from the building of the bridge and its approaches."

That in giving said instruction said trial court authorized the taking of defendants' land without just compensation and thereby de-

prived them of their rights under the 5th Amendment to the Constitution of the United States invoked by said defendants in said trial court; and the Supreme Court of Missouri erred in affirming said ruling.

12. That the circuit court and the Supreme Court erred in this cause by deciding in effect that the petition for condemnation herein was sufficient in law, when said petition fails to allege facts essential to show compliance with the said Act of Congress (approved January 26, 1901) authorizing the construction of said bridge, without which compliance the said structure is not a lawful structure.

13. That the petition in this cause is insufficient in law to authorize condemnation of said defendants' land sought thereby to be appropriated; and said circuit and Supreme Courts of Missouri erred in deciding said petition to be sufficient and thereby denied
205 the defendants (appellants) the right they invoke to protection of the 5th Amendment to the federal constitution.

15. Upon the undisputed facts neither the circuit nor supreme court of Missouri had power to authorize the taking of the land of defendants (described in the petition) and the taking thereof by these proceedings by the decision of said courts deprives defendants of rights secured by the 5th and 14th amendments of the Constitution of the United States.

15. The Supreme Court of Missouri erred in deciding that the commissioners' report of the assessment of damages was competent evidence at the trial of said cause, and in affirming the judgment of the said trial court, admitting same in evidence against objection of defendants for incompetency and irrelevancy.

16. That the (trial) circuit and supreme courts of Missouri erred in holding that plaintiff (respondent) had the power of eminent domain and the right to condemn the Missouri land of defendants (mentioned in the petition herein) by virtue of a charter granted by the State of Illinois; and thereby depriving defendants of the right and immunity they claimed (under 30 U. S. State at Large, 1151) in respect of bridges over navigable rivers.

17. Under the Constitution of the United States, which makes the Acts of Congress the supreme law of the land (Const. U. S., Art. 6) and the action of the Secretary of War under the Act in this case, there was no power in the Courts of Missouri to condemn the strip of land of the defendants described in the judgment herein, beyond seven hundred and twenty (720) feet from the Mississippi River on the Missouri side.

18. The Circuit Court erred in submitting the cause to the jury, under the documentary and undisputed evidence to the effect that plaintiff has not complied with the Act of Congress of January 26, 1901, which alone authorizes the construction of said bridge, and the Supreme Court erred in affirming said ruling.

19. The judgment of the Circuit & Supreme Court- in this
206 cause is an invasion of the rights, privileges and immunities of defendants under the 14th Amendment of the Constitution of the United States, declaring that no person shall be deprived of property without due process of law.

20. The judgment of the Circuit & Supreme Court- in this cause

is an invasion of the rights, privileges and immunities of defendants under the Constitution of the United States, in that said Courts refused to give paramount force to the Act of Congress in evidence, approved January 26th, 1901, and thereby the Circuit & Supreme Court- refused to give defendants the benefit of the Constitution of the United States and Article 6 thereof, declaring that said Constitution and the laws of the United States made in pursuance thereof shall be the supreme law of the land.

21. The judgment of the Circuit & Supreme Court- in this cause is an invasion of the rights, privileges and immunities of defendants under the Constitution of the United States, in that said Circuit Court refused to give effect to the 5th Amendment and 14th Amendment of the Constitution of the United States, declaring that private property shall not be taken for public use without just compensation, or without due process of law.

22. The judgment of the Circuit and Supreme Court- in this cause is an invasion of the rights, privileges and immunities of defendants under the Federal Constitution because said judgment does not accord supreme effect to the Act of Congress aforesaid.

23. The trial court erred in permitting the compensation, which defendants were to be paid for their land, to be reduced by supposed "benefits" to other land of defendants, contrary to the terms of the Constitution of Missouri and to the provisions of the Federal Constitution above cited.

For the foregoing prejudicial errors, and each of them, affecting the merits of this cause (appellants) plaintiffs in error pray a reversal of the judgment of the said Circuit Court of Dunklin County, Mo., and the judgment of affirmance thereof by the Supreme Court of Missouri.

207 And the said R. G. Stone, R. M. Finley and Nannie E. Finley as plaintiffs in error pray that the judgment aforesaid, for each one of the errors aforesaid and for other errors in the record and proceedings in said cause whereby the said plaintiffs in error have been by said judgment deprived of their rights, privileges and immunities as citizens of the United States, and for each of the errors and matters above assigned, be reversed, annulled and held for naught, and that the said plaintiffs in error may be restored to all things which they have lost by reason of said judgment of the said Supreme Court of the State of Missouri and by the judgment of said Circuit Court of Dunklin County, Missouri, affirmed thereby.

R. G. STONE,
R. M. FINLEY &
NANNIE E. FINLEY,
Plaintiffs in Error,
By SHEPARD BARCLAY,
Their Attorney and of Counsel.

STATE OF MISSOURI, *ss:*

The foregoing assignment of errors has been presented and filed, along with the petition for writ of error by counsel for appellants

(plaintiffs in error) in the said cause mentioned therein, this 15th day of March, 1906.

THEODORE BRACE,
Chief Justice of the Supreme Court of Missouri.

Attest, Seal of said Court,
JNO. R. GREEN,
Clerk of the Supreme Court of Missouri.

208 And which said order fixing amount of bond is in words and figures as follows, to-wit:

In the Supreme Court of Missouri, October Term, 1905.

No. 12089.

SOUTHERN ILLINOIS & MISSOURI BRIDGE COMPANY, Respondent,
vs.
R. G. STONE, R. M. FINLEY and NANNIE E. FINLEY, Appellants.

Order Fixing Amount of Bond on Writ of Error, etc.

The defendants, R. G. Stone, R. M. Finley and Nannie E. Finley, appellants in the cause above entitled of Southern Illinois & Missouri Bridge Company, Respondent, *vs.* R. G. Stone, R. M. Finley and Nannie E. Finley, Appellants, No. 12089, in said Supreme Court of Missouri (as plaintiffs in error in the Supreme Court of the United States in said cause) having this day filed their petition for writ of error from the decision and judgment herein made and rendered to the Supreme Court of the United States, together with an assignment of errors, within due time, and also, praying that an order be made, fixing the amount of security which defendants should give and furnish upon said writ of error, and upon the giving of such security all other proceedings in said Supreme Court of Missouri be suspended and stayed until the determination of said writ of error by said Supreme Court of the United States; and said petition having this day been duly allowed.

Now, therefore, it is ordered that, upon the said defendants filing with the Clerk of the Supreme Court of the State of Missouri a good and sufficient bond in the sum of Five Thousand dollars, conditioned that if the said defendants, appellants, and plaintiffs in error, shall prosecute said writ to effect and to answer all damages and costs if they fail to make good their said plea in error, then the said
209 obligation shall be void, else to remain in full force and virtue (said bond to be approved by the Supreme Court of Missouri, or by the undersigned as Chief Justice thereof) that all other proceedings in the Said Supreme Court of Missouri be and they are hereby suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

Dated at Jefferson City, Missouri, this 15th day of March, 1906.

THEODORE BRACE,
Chief Justice of the Supreme Court of Missouri.

Attest, the Seal of said Court:
JNO. R. GREEN,
Clerk of the Supreme Court of the State of Missouri.

And afterwards, to-wit, on the 20th day of March, 1906, the further following proceedings were had in said cause, viz:

SOUTHERN ILLINOIS & MISSOURI BRIDGE COMPANY, Respondent,
vs.
R. G. STONE, R. M. FINLEY, and NANNIE E. FINLEY, Appellants.

Now at this day, come the said appellants by attorney and file their bond in this cause in the sum of $5,000.00 which said bond is approved by the Honorable Theodore Brace, in Chambers, and which said bond is ordered filed and made a part of the record herein.

Which said bond is in words and figures as follows, to-wit: Know all men by these presents, That we, R. G. Stone and R. M. Finley and Nannie E. Finley—by our attorney in fact Jno. A. Hope as principals and Louis Houck and Merit E. Leming as sureties are held and firmly bound unto Southern Illinois & Missouri Bridge Company, a corporation, in the full and just sum of Five Thousand Dollars, to be paid to the said Southern Illinois & Missouri Bridge Company, a corporation, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents, sealed with our seals and dated this
17th day of March, in the year of our Lord, One Thousand
210 Nine Hundred and Six.

Whereas, lately at the October Term, A. D. 1905, of the Supreme Court of Missouri, in a suit depending in said Court between Southern Illinois & Missouri Bridge Company (Respondent) Plaintiff and R. G. Stone, R. M. Finley and Nannie E. Finley (Appellants) Defendants, judgment was rendered against the said Defendants, Appellants and the said R. G. Stone, R. M. Finley and Nannie E. Finley, Appellants (Defendants) having obtained a writ of error of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Southern Illinois & Missouri Bridge Company, Respondent and Plaintiff citing and admonishing it to be and appear at a Supreme Court of the United States to be held at Washington, D. C., not exceeding thirty days from and after the date of said Citation.

Now, The Condition of the above obligation is such, that if the said Defendants, Appellants (as Plaintiffs in error) shall prosecute said writ to effect and answer all damages and costs, if they fail to make good their said plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

R. G. STONE, [SEAL.]
R. M. FINLEY, [SEAL.]
NANNIE E. FINLEY, [SEAL.]
By Their Attorney, JOHN A. HOPE. [SEAL.]
LOUIS HOUCK. [SEAL.]
M. E. LEMMING. [SEAL.]

Approved by
THEODORE BRACE,
Chief Justice.

(March 20, 1906.)

STATE OF MISSOURI, *County of Cape Girardeau, ss:*

Before me, Rollin B. Andrews, a Notary Public within and for Cape Girardeau County, Missouri, personally appeared Louis
211 Houck to me well known who upon oath states that he is worth over and above his indebtedness the sum of one Hundred thousand dollars and that he owns real property to that amount subject to execution in Cape Girardeau, New Madrid, Scott & Bollinger counties of the value of fifty thousand dollars.

LOUIS HOUCK.

Subscribed and sworn to before me this 17th day of March, 1906.

[SEAL.] ROLLIN B. ANDREWS,
Notary Public.

My term expires Nov. 10, 1906.

STATE OF MISSOURI, *County of Cape Girardeau, ss:*

Before me, Rollin B. Andrews, a Notary Public within and for Cape Girardeau County, Missouri, personally appeared Merit E. Lemming to me well know who upon oath states that he is worth over and above his indebtedness the sum of ten thousand dollars, and that — own- real property to that amount, subject to execution in Cape Girardeau and Butler Counties.

M. E. LEMMING.

Subscribed and sworn to before me this 17th day of March, 1906.

[SEAL.] ROLLIN B. ANDREWS,
Notary Public.

My term expires Nov. 10, 1906.

STATE OF MISSOURI, *County of Cape Girardeau, ss:*

I do hereby certify that the parties subscribing the within bond are respectively over the age of twenty-one years and are competent to contract, and that their signatures to said bond are genuine: I further certify that said bond is good and sufficient.

Witness my hand this 17th day of March, 1906.

[SEAL.] ROLLIN B. ANDREWS,
Notary Public.

My term expires Nov. 10, 1906.

212 STATE OF MISSOURI, *sct:*

I, John R. Green, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the record and proceedings of the above entitled cause, as fully as the same remain on file and of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court. Done at office in the city of Jefferson, this 30th day of March, 1906.

[Seal of the Supreme Court of Missouri.]

JNO. R. GREEN,
Clerk Supreme Court.

Transcript fee $135.85 paid March 30th, 1906.

JNO. R. GREEN, *Clerk.*

Endorsed on cover: File No. 20,196. Missouri Supreme Court. Term No. 253. R. G. Stone, R. M. Finley, and Nannie E. Finley, plaintiffs in error, *vs.* Southern Illinois & Missouri Bridge Company. Filed April 16th, 1906. File No. 20,196.

FILE COPY.

Office Supreme Court
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JAMES H. McKEN

(20,196)

NO. 253

(OCTOBER TERM, 1908)

IN THE

Supreme Court of the United States

R. G. STONE, R. M. FINLEY AND NANNIE E. FINLEY,

Plaintiffs in Error.

vs.

SOUTHERN ILLINOIS AND MISSOURI BRIDGE COMPANY,

Defendant in Error,

In Error to the Supreme Court of the State of Missouri

BRIEF FOR PLAINTIFFS IN ERROR

MADISON R. SMITH,
THOMAS T. FAUNTLEROY and
SHEPARD BARCLAY,
Attorneys for Plaintiffs in Error

St. Louis Law Printing Co., 311-315 Locust. Bell, Main 1819; Kinloch, Central 906 L.

Due service of BRIEF FOR PLAINTIFFS IN ERROR acknowledged.

MARTIN L. CLARDY,
Of Counsel for Defendant in Error

(20,196)

NO. 253

(OCTOBER TERM, 1906)

IN THE

Supreme Court of the United States

R. G. STONE, R. M. FINLEY AND NANNIE E. FINLEY,

Plaintiffs in Error.

vs.

SOUTHERN ILLINOIS AND MISSOURI BRIDGE COMPANY,

Defendant in Error,

In Error to the Supreme Court of the State of Missouri

BRIEF FOR PLAINTIFFS IN ERROR

STATEMENT FOR PLAINTIFFS IN ERROR

Short Outline. The writ of error in this case is brought to review a final judgment of the Supreme Court of Missouri in a suit begun in the Circuit Court of that State by defendant in error (plaintiff below) against the plaintiffs in error (defendants below) to

condemn about 20 acres of land (comprising a strip 200 feet wide, and over 4,000 feet long) as part of an approach to a RAILROAD BRIDGE over the Mississippi River, constructed by defendant in error, a bridge company, incorporated in Illinois under the general laws of that State, which do not confer on such corporations the right of eminent domain.

The bridge was authorized by an Act of Congress which requires the Bridge Company to submit first to the Secretary of War its **"design and drawings of the bridge, piers, approaches and accessory works"**, which (after reference to the U. S. Board of Engineers) when approved by the Secretary, should form the plans for the construction of the bridge.

The Bridge Company accordingly submitted its designs and drawing of the bridge approaches. They were approved by the Secretary of War. Those documents **defined the limits of the bridge approach,** on the Missouri side, at 720 feet from the river bank, as is shown by the plat in the Printed Record (p. 68). Nevertheless, the strip of land proposed to be taken and condemned for bridge purposes, under the rulings in the decision of a majority of the Supreme Court of Missouri, extends westward from the river bank **about twelve thousand feet.**

Two decisions by a majority of the Supreme Court of Missouri have been rendered, which state some features of the litigation. The later judgment is the one to which the pending writ of error is directed.

So. Ill. and Mo. Bridge Co. v. Stone, 174 Mo. 1; 194 Mo. 175

It should be noted, at the outset, that the Missouri statute in regard to the condemnation of land for bridge

approaches does not purport to apply to bridges across interstate streams such as the Mississippi.

The Bridge Company was not incorporated under the laws of Missouri.

The laws of Illinois, under which the Bridge Company was organized, do not authorize the condemnation of land by such companies for bridge purposes.

These facts all appear affirmatively in this Record.

It is the contention of plaintiffs in error that the right to condemn their land as an approach to this bridge, whose rightful construction depends upon the authority conferred by an Act of Congress, is limited by the constitution and laws of the United States to an **area defined by those Federal laws**, and that plaintiffs in error enjoy, by virtue of those laws, an immunity from having their land taken **for the purpose of a bridge approach** beyond the territorial limits marked for that approach by the PLANS, DESIGNS and DRAWINGS of the Bridge Company, approved by the Secretary of War, under the Federal law which formed the only authority making the bridge a **"lawful structure"** (to quote the language of the Act of Congress itself).

Plaintiffs in error have observed, as will appear later, all the formalities necessary to bring under review by this Court the questions which will be discussed in this brief.

Many matters of detail will be necessary to consider in reaching a full understanding of the case.

This outline is intended merely to afford a broad view of the general features of the controversy.

ABSTRACT OF THE RECORD.

The suit was commenced by the filing of a petition in the Circuit Court of Scott County, Missouri, April 24, 1902, and on the same day a writ of summons was issued to defendants (Printed Record, p. 5).

The proceedings are founded on said petition, which is as follows (omitting caption):

PETITION.

Plaintiff for its cause of action says it is a corporation regularly incorporated **under the laws of the State of Illinois** and has obtained from the Secretary of State of the State of Missouri authority to do business in the State of Missouri.

That it is incorporated for the purpose of erecting and maintaining a **bridge** across the Mississippi River from a point near Thebes, in Alexander County Illinois, to a point near Manning's Landing, in Scott County, Missouri, with the necessary appurtenances thereto.

That said bridge is being constructed **under an act of Congress** entitled an Act to Authorize the Construction of a Bridge across the Mississippi River at or near Grays Point, Missouri, approved January 26th, 1901. That the same is being constructed **within the territorial limits and conditions in said act fully set out.**

That said bridge is intended as a railway bridge and it is necessary for this plaintiff to have a right-of-way **for its railway tracks, bridge and terminal yards,** etc.

That the general direction of its **yards** will be westwardly from the western bank of the Mississippi River.

That **for the purpose of carrying out its charter privileges,** it is necessary for it to hold and to own the following described tract of land, lying and being in the County of Scott, State of Missouri, to-wit:

> A part of the S. E. and S. W. parts of private survey No. 794 in tw. 30, range 14 East, and in lot 2 of the N. E. qr. of sec. 2, tw. 29, range 14 East, being a ract of land 200 ft. wide, 100 ft. on each side of the center line of the approaches to the Southern Illinois and Missouri Bridge Co., as located and platted, beginning at a point on the East line of fractional sec. 34, tw. 30, R. 14 East, and 1240 ft. from the S. E. cor. of said frac. sec., thence run South 70 degree 45 minutes East 765 ft., thence by a one degree curve to the right 980 4-10 ft., thence south 59 degree 45 minutes East 924 8-10 ft., thence by a 2 deg. 30 min. curve to left 1289 3-10 ft., thence N. 87 deg. 51 min. East to the west bank of the Mississippi River; said center line intersects the north line of twp. 29, 100½ ft. west of the N. W. cor. of lot 2 in the N. E. qr. of sec. 2, twp. 29, R. 14 East, and also intersects the west line of said lot 2, 69 1-10 ft. south of the N. W. cor. of said lot 2.

The tract above described contains 20 3-10 acres and will appear **by a blue print hereto attached** and made a part of this petition.

That the defendants herein, together with R. M. Finley, the husband of one of the defendants, are the owners of said real estate.

That defendants Heldt, Miller and Bates are tenants, having growing crops on different portions of said real estate.

That the defendants have refused to relinquish the plaintiff the right to the occupancy and use of said real estate for the purposes designated.

That your petitioner has endeavored to agree with defendants and each of them, upon the price to pay for said property, but has been unable to amicably settle or to agree at all upon a proper compensation to either of the parties defendant.

That said real estate **is necessary for the laying of tracks and the handling of business over and across plaintiff's bridge.**

Wherefore your petitioner prays the Court to make such orders and decrees that may be proper and necessary and to appoint three freeholders of the County of Scott and State of Missouri, as commissioners **to assess the damages** which defendants may sustain in consequence of the establishment, erection and maintenance of said road and approaches over and through the said premises and for all proper orders.

W. H. MILLER,
For Plaintiff.

At the return day, a change of venue was granted and the cause transferred to the Dunklin Circuit Court, where defendants filed their

ANSWER,

not needful to quote at this time since it was amended later.

On the issues thus raised, a hearing took place in 1902, and the Circuit Court gave

JUDGMENT FOR DEFENDANTS

Plaintiff appealed to the Supreme Court where a majority of the judges reversed the judgment (174 Mo. 1) and remanded the case with directions

"To The Circuit Court

of Dunklin County to proceed at once to appoint three disinterested commissioners", etc., as prayed, "to assess damages", etc.

Thereafter, March 24, 1903, the Circuit Judge appointed three commissioners, who after a hearing made report, assessing the damages to defendants at $8,120 (Printed Record, p. 21).

Exceptions of Defendants

Defendants filed exceptions to the report of the commissioners, challenging its validity and sufficiency in many particulars, fully shown in the Printed Record (p. 12). These exceptions in paragraphs "*First, Second, Third, Sixth, Seventh, Eighth* and *Tenth*", raise several of the Federal questions to be presented here.

Cause Set for Hearing

After the exceptions were filed, the cause was set for hearing and the defendants filed (Printed Record, p. 18) their

Amended Answer (omitting caption)

Some parts of the answer relate to matters not reviewable here, but the following passages indicate objections made at the out set by defendants (now plaintiffs in error):

* * * * * *

"And defendants further aver, on the other hand, that plaintiff has *no power to condemn the property described in its said petition beyond the seven hundred and twenty (720) feet*, the length of the approach to said bridge on the Missouri side of said Mississippi River, for the reason that by the terms of said Act of Congress, approved as aforesaid, on

January 26, 1901, the approaches to said bridge as to length, height, breadth and general character were placed *under the supervision of, and to be determined by the Secretary of War*, or the Civil Engineers of his department, and that, by said Act of Congress, that power was vested *alone* in him.

Defendants aver that the said Secretary of War has discharged his duty in that behalf *by so fixing the height, breadth, length and general character of said approaches*, and that he has in the manner provided for by said Act of Congress *established the length of the approach, on the Missouri side of said river*, at *seven hundred and twenty (720) feet as above stated*, as evidenced by the Secretary of War's certificate hereto attached and made a part of this answer, and not at forty-five hundred (4,500) feet, or any other distance, as claimed by plaintiff company.

Defendants state that plaintiff is, by the terms of its charter, and said Acts of Congress, and cognate Acts of Congress, and the fixing of said western approach to said bridge at seven hundred and twenty (720) feet by the Secretary of War as aforesaid, *confined unalterably to that approach, and to the length of seven hundred and twenty (720) feet as aforesaid*, and not to any other length, *and that as a matter of law, the Court should declare the length of said approach to be* seven hundred and twenty (720) feet, and nothing over that length or distance.

However, if the Court, in its judgment, should not consider the *length of said approach a question of law*, then, as a matter of right and by proper procedure, that question should be submitted by the Court as one of fact, under proper instructions, to the jury, *and on this point the defendants pray the judgment of the Court.*

* * * * * *

Defendants state that the taking of property *by such void orders and judgment is in violation of that fundamental principle of constitutional law, Federal and State, that declares that "no person*

shall be deprived of life, *liberty or property without* due process of law, nor deny any person within its jurisdiction the equal protection of the law", and on these constitutional provisions, defendants rely for the protection of their rights in the premises, and now and here plead them against plaintiff's usurpation of charter powers and pretended lawful claim to condemn their land; and aver that it has no right and no authority whatever to take that strip of their land, two hundred (200) feet wide, for a distance of approximately four thousand (4,000) feet, west of and beyond the established approach to said bridge of the said seven hundred and twenty (720) feet, as fully hereinbefore described.

SAID ANSWER was verified by one of the attorneys on behalf of and for defendants.

TRIAL

The cause then came to trial in the Circuit Court before a jury.

The following facts appeared by undisputed evidence, chiefly documentary, which are duly preserved by bill of exceptions in accord with the practice in Missouri (Printed Record, pp. 22-182).

Plaintiff is a corporation organized under the **laws of Illinois,** by Articles of Incorporation offered in evidence which recite the name of the company; that it is formed under the "Act Concerning Corporations", approved April 18. 1872; has capital stock of $50,000, in 500 shares of 100 dollars each; and has its principal office in Chicago, Illinois, and corporate term of 99 years. (Record p. 89.)

The objects for which said corporation is formed are described (in the Articles) as follows:

"The objects for which said corporation is formed is **to erect, construct, maintain and operate a bridge and approaches thereto over the Mississippi River from a point on** the east bank of **the Mississippi River in** the **County** of **Alexander in** the **State of Illinois to** a point opposite thereto **in** the **State of Missouri,** which said bridge and approaches thereto shall **provide for the passage of railway trains and, at the option of said corporation, its successors and assigns, may be so constructed as to provide for and be used also for the passage of wagons and vehicles of all kinds, for the transit of animals and for foot-passengers, for such reasonable tolls as may be approved from time to time by the Secretary of War.**"

[The significance of the foregoing can best be understood by comparing it with the first section of the Act of Congress under which the bridge construction was authorized upon certain conditions. Those parts of the above passage marked in **bold faced type**, showing the objects of the Bridge Company, according to its own expression thereof, will be found identical with the terms of the first section of the Act of Congress concerning this Bridge.]

It should also be noted that the Articles of Incorporation of plaintiff were acknowledged, Dec. 5, 1900. The certificate of the Secretary of State of Illinois pronouncing its full legal organization is dated Dec. 28, 1900, while the Act of Congress was "approved January 26, 1901", and recites the incorporation of plaintiff (Printed Record, p. 84).

It is upon this Act of Congress *only* that plaintiff's right to construct the bridge can be sustained. Necessarily, the conditions of that Act are essential and jurisdictional requirements to the exercise of any rights

to erect or maintain the bridge or its approaches under the present Federal law (30 U. S. Stat. L., p. 1151, sec. 9.)

Plaintiff, March 25, 1902, obtained from the Secretary of State of Missouri, a certificate of compliance with the law governing Foreign Private Corporations and a license to do business in this State. (Printed Record, p. 93.)

The Illinois statute referred to in the Articles of Incorporation was put in evidence by defendants as follows:

> Chapter 32, section 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, that corporations may be formed in the manner provided in this act for any lawful purpose except banking, insurance, real estate, brokerage, the operation of railroads and the business of loaning money, provided that horse and dummy railroads and organizations for the purchase and sale of real estate for burial purposes only, may be organized and conducted under the provisions of this act, and provided further that corporations formed for the purpose of constructing railroad bridges shall not be held to be railroad corporations.
>
> (Printed Record, p. 83.)

The Federal Act of Congress, approved January 26, 1901, was put in evidence (Printed Record, p. 84).

All of its terms are important, but for this statement only certain parts will be reprinted:

ACT OF CONGRESS

An Act to authorize the construction of a bridge across the Mississippi River at or near Gray's Point, Missouri.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Southern Illinois & Missouri Bridge Company, **a corporation created and organized under and by virtue of the laws of the State of Illinois,** its successors and assigns, be, and the same are hereby, authorized and empowered to **erect, construct, maintain, and operate a bridge and approaches thereto over the Mississippi River** from a point on the Mississippi River in Alexander County, in the State of Illinois, opposite the terminus of the Saint Louis Southwestern Railway, at or near Gray's Point, in Scott County, in the State of Missouri, or from some other convenient point on said river in said Alexander County, Illinois, to some opposite point on said river in the State of Missouri, within the distance of three miles above or below the terminus of said railway. **Said bridge shall be constructed to provide for the passage of railway trains,** and, at the option of said corporation, its successors or assigns, may be so constructed as to provide for and be used also for the passage of wagons and vehicles of all kinds, for the transit of animals, and for foot passengers for such reasonable tolls as may be approved from time to time by the Secretary of War.

Sec. 2. That the bridge **BUILT,** operated, and maintained **under this Act, and subject to its limi-**

tations, shall be a **lawful structure** and shall be recognized and known as a post route, upon which also no higher charge shall be made for the transmission over the same of the mails, the troops, and the munitions of war of the United States than the rate per mile paid for the transportation of the same over the railroads or public highways leading to said bridge, and it shall enjoy the rights and privileges of other post roads in the United States; and equal privileges in the use of said bridge shall be granted to all telegraph and telephone companies; and the United States shall have the right-of-way across said bridge and its approaches for postal-telegraph or for telephone purposes.

Sec. 3. [Contains directions in regard to spans, clear headroom, etc.]

Sec. 4. That all piers shall be built parallel to the current of the river at the stage of water that is most important to navigation.

[Here follow other terms in regard to construction.]

Sec. 5. **That the approaches to the bridge built under this Act shall be so designed and constructed** as not to interfere with the free discharge of the river in seasons of flood; and any encroachment on the high-water cross-sections by piers, solid embankments, or otherwise, which might result in unduly accelerating the high-water current at the site of the bridge shall not be allowed.

[Then follow provisions for protection of river craft.]

Sec. 6. [Contains more provisions for protection of navigation.]

Sec. 7. That the said company shall submit in triplicate to the Secretary of War, for his examination, upon a convenient scale, **a design and drawings of the bridge, piers, approaches and accessory works, and a map of the location,** giving, for the space of at least two miles above and one below the proposed site, the topography of the banks of the river and the shore lines at high and low water, and this map shall be accompanied **by another drawn on a scale of one inch to two hundred feet,** giving for a space of one-half mile above the proposed site and a quarter of a mile below, an accurate representation of the bottom of the river by contour lines two feet apart determined by accurate soundings, and also showing over the whole width of this part of the river the force and direction of the currents at low water, at high water, and at least one intermediate stage, by triangulated observations on suitable floats; and these maps shall also show the location of other bridges, coal tipples, cribs, and all other structures projecting into the river at bank-full stage, in the vicinity, and shall give such other information as the Secretary of War may require for a full and satisfactory understanding of the subject. Said maps and drawings shall be referred to the board of officers of the Corps of Engineers, United States Army, for examination and report, which board shall personally examine the site of the proposed bridge and shall hold a public session in the City

of St. Louis, Missouri, **to hear all objections thereto,** of which public session due notice and invitation to be present shall be given to all interested parties by advertising, and such parties shall be allowed sufficient time for a full examination and consideration of the plans; and if said board of engineers reports that the location selected is unsuitabte for a bridge, **the bridge shall not be built at that location,** or if said board reports that the plans presented are unfavorable to the interests of navigation at the site proposed the Secretary of War shall be authorized, on recommendation of said board, to refuse permission for the construction of a bridge at the proposed site until such changes in the design of the bridge or the location of its piers as may be deemed necessary shall have been made, and to require, in the same way, at the expense of the parties constructing such bridge, the construction of such dikes and other auxiliary structure as may be needed for confining the flow to a permanent channel for a distance of not less than one mile above the bridge site for a proper distance below, but in no case shall there be a reduction in the width or headroom of channel or other spans, or in the arrangement and length of accessory works required by this Act, unless such reduction is made necessary by the physical characteristics of the river in the locality where the bridge is proposed, or is shown clearly to be not injurious to the interests of navigation; and the **proposed bridge shall be a lawful structure only when built in accordance with the plans as recommended by the said board of engineers,** and ap-

proved by the Chief of Engineers, United States Army, **and the Secretary of War,** and while so managed and kept in repair as to offer at all times reasonable and proper means for the passage of rafts, steamboats, and other water craft under said bridge, and while all the requirements of this Act are observed.

Sec. 8. [Relates to lights and signals and water-gauges.]

Sec. 9. That all railroad companies desiring the use of any bridge constructed under this Act shall have, and be entitled to, equal rights and privileges relative to the passage of railway trains or cars over the same and over the approaches thereto, upon payment of a reasonable compensation for such use; and in case the parties interested shall fail to agree upon the sum or sums to be paid and upon the rules and conditions to which each shall conform in using said bridge, all matters at issue between them shall, upon the application of either party, be determined by the Circuit Court of the United States in and for any district in which any portion of said bridge may be.

Sec. 10. That such **alterations and changes** as may be required by the Secretary of War, in accordance with existing law, **in the bridge constructed under the provisions of this Act,** so as to preserve free and convenient navigation, shall be made under the direction of the Secretary of War at the expense of the persons, companies, or corporations owning, controlling, or operating said

bridge; and the fact that said bridge was constructed under the supervision of the United States shall not be held to be a bar to the enforcement of this requirement.

Sec. 11. That the **bridge constructed** under the authority of this Act shall be **built under the general supervision of the Secretary of War,** and **no changes or alterations in plans shall be made during construction of said bridge or after its completion** unless said changes or alterations conform to the provisions of this Act and are recommended by the Chief of Engineers and **approved by the Secretary of War.** That during the original construction of said bridge, or in carrying out any authorized changes or repairs of said bridge, a navigable channel sufficient to accommodate the commerce of the river shall be preserved at all times at the site thereof, and the waterway of the river shall not be obstructed to a greater extent than is absolutely necessary, and such lights and buoys shall be kept on all cofferdams, piles, and other structures as may be necessary for the security of navigation; * * *

Sec. 12. That the right to alter, amend, or repeal this Act is hereby expressly reserved, and the right to require, at the expense of the owners, the **entire removal of any bridge** constructed under the provisions of this Act whenever Congress shall decide that the public interest so require is also expressly reserved; and the United States shall not be liable for damages arising from the exercise of the rights thus expressly reserved.

Sec. 13. That if the **construction of the bridge hereby authorized** shall not be commenced within one year and be **completed within three years** from the date of approval of this Act, then this Act shall be null and void, and all rights hereby conferred shall cease and determine.

Approved, January 26, 1901.

31 U. S. Stat. L. 741

The Act appears to have been introduced December 10, 1900, in the House of Representatives (No. 12,548) as appears by the Congressional Record of the 2nd session of the 56th Congress. It was passed by the House, January 18, 1901, and by the Senate, January 21, 1901, as appears by the same official record. It was approved by the President, January 26, 1901, and then became a law. (See said Congressional Record, pp. 208, 1239, 1251.)

Under this Act (sec. 7) the plaintiff submitted a **drawing and plan of the bridge approach on the western (or Missouri) side of the river.** It was put in evidence by defendants and appears at page 68 of the Printed Record. The certificate of the Chief of Engineers of the U. S. Army and of the Secretary of War, Hon. ELIHU ROOT, are extremely clear and definite as to the purpose, intent and scope of the map, as follows:

United States of America,
War Department,
WASHINGTON, April 23, 1903.

I hereby certify that the attached writing is a copy of the instrument executed by the Secretary of War, January 16, 1902, approving the plan and location of the bridge proposed to be built across

the Mississippi River, at or near Grays Point Mo., by the Southern Illinois and Missouri Bridge Company; that the attached tracing is a part of the plan, approved as aforesaid, showing piers 5 and 6 and the **western approach of the proposed bridge;** and that the same are true and correct copies of the originals on file in the office of the Chief of Engineers, U. S. Army.

G. L. GILLESPIE,
Brig. Gen., Chief of Engineers,
U. S. Army.

Be it known that G. L. Gillespie, who signed the foregoing certificate, is the Chief of Engineers of the United States Army, and that to his attestation as such full faith and credit are and ought to be given.

SEAL
UNITED STATES
OF AMERICA
WAR OFFICE

In witness whereof, I have hereunto set my hand and caused the seal of the War Department to be affixed, on this twenty-fourth day of April, one thousand nine hundred and three.

ELIHU ROOT,
Secretary of War.

Whereas, By an Act of Congress, approved January 26, 1901, entitled "An Act to authorize the construction of a bridge across the Mississippi River at or near Grays Point, Missouri",..... ..... the Southern Illinois and Missouri Bridge Company, a corporation existing under the laws of the State of Illinois,..... ..... was authorized to construct a bridge over the Mississippi River at or near Grays Point, Missouri, ...upon obtaining the approval by the Secretary of War of such design and drawings and map of location of the said bridge as shall comply with the requirements of the said act;

And whereas, said Southern Illinois and Mis-

souri Bridge Company has submitted to the Secretary of War, for his examination and approval, a design and drawings and a map of the location of a proposed bridge over said river at said place, which comply with the requirements of said act;

Now, therefore, This is to certify that the said design and drawings and map of location, which are hereto attached, are hereby approved by the Secretary of War, subject to the following condition:

That the Engineer Officer of the United States Army, in charge of the district within which the bridge is to be built, may supervise its construction, in order that said plans shall be complied with.

WITNESS my hand this sixteenth day of January, 1902.

[SEAL] WM. CARY SANGER,
Asst. Secretary of War.

It was shown by the evidence of the Chief Engineer of the Bridge Company that the work of construction did not begin "until along in April", 1902 (Evidence of Mr. Angier, Printed Record, p. 23).

It was further shown that plaintiff had been enjoined from entering upon the real estate in controversy (or from interfering with its possession) in a suit brought by the Cape Girardeau & Thebes Terminal Railroad Company (a Missouri corporation) against the Southern Illinois & Missouri Bridge Co. (Printed Record, p. 107). The Terminal Railroad Co. had acquired title under defendants, who had parted with their title by deed recorded April 24, 1902, same day (but a little later in time than the hour when the present plaintiff's suit was filed) and under a contract or option for sale made early in April, 1902 (Printed Record, pp. 104–5).

The injunction was issued on the proper showing and contains a full recital of the facts on which it is

founded. It was in force at the time of the trial, and its mandatory language forbids any further proceedings in the case at bar (Printed Record, p. 109).

There was much evidence on the issue of values which need not be repeated at this time.

The details of the testimony at the trial are unnecessary here. So far as any of them are material, they will be mentioned in connection with the discussion concerning them.

Plaintiff's Instructions Given

At the close of the evidence the Court gave to the jury instructions on behalf of the plaintiff, to each of which the defendants excepted at the time. Those which bear upon the matters reviewable in this Court are as follows:

No. 1

"The Court instructs the jury that on the 24th day of April, 1902, at 10:40 o'clock a. m., the Southern Illinois and Missouri Bridge Company as plaintiff, filed in the Circuit Court of Scott County, Missouri, its petition against R. G. Stone, Nannie Finley and R. M. Finley, her husband, as owners, and Birgehardt Miller, Perry Bates and David Heldt, as occupying tenants, seeking to condemn for public use in connection with its bridge a strip of ground 200 feet wide and about 4,500 feet long, then owned by the said R. G. Stone, Nannie E. Finley and R. M. Finley, her husband, more particularly described as follows:"

[Then follows description of land as in petition.]

No. 2

The Court further instructs you that the plaintiff Bridge Company has the right under the law to take and appropriate said strip of ground upon pay-

ing to said defendant owners R. G. Stone, Nannie E. Finley and R. M. Finley, her husband, just compensation therefor, and that the only matter for the jury to determine in this cause is the just compensation to be paid by said company to said defendants.

No. 3

This just compensation, or in other words, the damages to which defendants are entitled, is the difference in the fair market value of defendants' whole property before and after the appropriation by plaintiff of the strip of land above described in view of the uses to which said strip condemned was to be thereafter applied.

The instruction No. 4 for plaintiff declares that

"The market value of the property means its actual value, independent of the location of plaintiff's bridge and approaches thereon; that is, the fair value of the property as between one who wants to purchase and one who wants to sell it", etc.

The fifth instruction for plaintiff bears on assessment of damages as to value only. (Printed Record, p. 176.)

The next instruction for plaintiff is as follows:

No. 6

The jury will consider the **benefits,** if any, and the disadvantages, if any, **resulting to the remainder of defendants' said property** from the appropriation by plaintiff Bridge Company, of the strip of land in question for the purpose of its bridge and approaches. The benefits to be considered and allowed by the jury are the direct and peculiar benefits, if any, which result **to the remainder of defendants' said property** and not the general benefits which defendants derive in common with the other land owners in the vicinity from the building of the bridge and its approaches.

Defendants' Instructions

The defendants' instructions given do not cure any of the points to be urged against those given for plaintiff, and relate only to values (Printed Record, p. 173).

Refused Instructions Asked by Defendants

One of the requests for instructions, refused by the trial court, should be noted, as follows:

4.

> The Court instructs the jury that plaintiff, under its charter and the Act of Congress authorizing it to build the bridge and approaches thereto, in view of the testimony submitted in the cause, has only power to appropriate to its use a strip of land extending westward to the bluff, for a distance of seven hundred and twenty (720) feet, for the western approach of its bridge (and the width thereof to be two hundred feet), this being the length of the approach as fixed by the Secretary of War, it being his duty by the terms of said Act of Congress to ascertain and fix the length of said approach.
>
> And you are further instructed that you will fix and assess such damages in favor of the defendants against plaintiff, for such strip of land as you may consider they have sustained by reason of the appropriation thereof.

Result of Trial

The jury having **duly** considered the instructions returned **the following verdict** upon which the Court entered judgment July 1st, 1903, to-wit:

Verdict

> We, the jury, find the defendants R. G. Stone and Nannie E. Finley, and R. M. Finley, for the

appropriation of the following described real estate, situated in the County of Scott, State of Missouri, to-wit: A part of the S. E. and S. W. parts of private Survey No. 794, in twp. 30, R. 14 east, and in lot 2 of the N. E. ¼ of sec. 2, twp. 29 R. 14 east, being a tract of land 200 feet wide, 100 feet on each side of the center line of the approaches to the Southern Illinois and Missouri Bridge Co. as located and platted, beginning at a point on the east line of fractional sec. 24, twp. 30, R. 14 east, 1,240 ft. from the S. E. corner of said fractional sec.; thence run south 70 degrees 45 minutes east, 765 feet; thence by a one degree curve to the right 880 4-10 feet; thence south 59 degrees 45 minutes east, 924 8-10 ft.; thence by a 2 degree 30 minute curve to the left 1,289 3-10 feet; thence N. 87 degrees, 57 minutes, east to west bank of the Mississippi River. Said center line intersects the north line of twp. 29, 100½ feet west of the N. W. corner of lot 2 in the N. E. quarter of section 2, twp. 29, R. 14 E., and also intersects the west line of said lot 269 1-10 ft. south of the N. W. corner of said lot 2, have been damaged in the sum of ten thousand dollars.

T. A. MEDLEY, *Foreman.*

JUDGMENT

It is therefore considered and adjudged that defendants have and recover of and from the plaintiff the sum of ten thousand dollars as their damages by reason of the appropriation of the land in the verdict described by the plaintiff, together with the legal cost herein expended, and that therefor they have execution. It further appearing to the Court that plaintiff has heretofore paid into Court the sum of $8,120.00 on account of said damages; now, therefore, upon payment by the plaintiff of a further sum of $1,880.00 into Court for the use and benefit of defendants, it is ordered that the easement for the use and purposes of plaintiff, its successors or assigns, for bridge

approach, roadways, terminal yards and necessary appurtenances, be vested in plaintiff and divested of defendants and their assigns in the real estate hereinbefore in the jury's verdict, which is made a part of this judgment and decree, fully described.

[Defendants saved exception at the time to the foregoing.]

[It will be noted that the judgment of the Court condemns the land of defendants not merely for a "bridge approach", but also for "*terminal yards and necessary appurtenances*". Defendants claim that said judgment is absolutely void, and in violation of the constitutional rights of the defendants (as assigned in their motion for new trial) because the uses, above specified as part of the uses to which the property of defendants is to be devoted under the judgment of the trial court, are not objects and purposes for which plaintiff has a right to take the land of defendants by process *in invitum*.]

Motions for Review

Within due time, defendants filed their motion for a new trial in which various errors assigned upon this review were fully set forth and specified, in so far as said specification is necessary for this review. (Printed Record, p. 178.)

Defendants also filed a motion in arrest of judgment in which it is claimed that the petition fails to state facts sufficient to authorize the Court to proceed to condemn the property in question (Printed Record, p. 181).

Said motions are set forth at large in the printed transcript of the record (pp. 178–182).

Your Honors will find, in the motion for new trial, among other grounds assigned, that defendants com-

plained and excepted to the verdict upon grounds which will be discussed in this Court, as will be observed by the reading of the *ninth*, *tenth*, *thirteenth*, *fourteenth* and *fifteenth* grounds assigned in the motion for new trial. The points which will be presented to the Court on this writ of error were **specifically made in** the trial court.

In the MOTION IN ARREST OF JUDGMENT defendants likewise objected to the order appointing the commissioners (for valuation of the land) inasmuch as it was then claimed the order was **void** in so far as it authorized a valuation **beyond the "720 feet thereof, the length of the approach to said bridge fixed by the Secretary of War."** (Printed Record, p. 181.)

APPEAL TO SUPREME COURT

The defendants' motions for new trial and in arrest were overruled by the Court, and exceptions thereto were duly saved by bill of exceptions filed in proper time. An appeal was regularly taken by defendants (now plaintiffs in error) from the judgment of condemnation to the State Supreme Court; all of which steps fully appear in the printed transcript (pp. 21-22, 182).

IN THE SUPREME COURT OF MISSOURI

The case was heard in the SUPREME COURT OF MISSOURI upon the trial record which appears in the printed transcript here, as well as upon **assignments of error** made in that Court by appellants (defendants below) now plaintiffs in error, which assignments of error in the Supreme Court of Missouri, fully present the points which will be submitted on this writ of error.

[See Assignments of Error in Supreme Court of Missouri, as printed in full in Transcript of Record in this Court, pp. 183–185].

Decision of Missouri Supreme Court

The Supreme Court of Missouri, five Judges concurring and two dissenting, announced a judgment affirming that of the Circuit Court above described. The learned opinion of the Supreme Court of Missouri appears in full in the Printed Record of this Court (pp. 187–193). The official report and an unofficial report of the same opinion are to be found in

So. Ill. & Mo. Bridge Co. v. Stone, 194 Mo. 175
So. Ill. & Mo. Bridge Co. v. Stone, 92 S. W. Rep. 475.

Writ of Error to This Court

To the foregoing judgment of the Supreme Court of Missouri (affirming the judgment of the Circuit Court of Dunklin County) plaintiffs in error (defendants below) sued out the pending writ of error, observing the usual formalities (Printed Record, pp. 196–203). In their assignment of errors at that time duly filed along with the application for the writ of error, the various points which will be mentioned in the **specification of errors** in this Court were duly presented, as will be found in the printed transcript (pp. 198–202).

The writ of error was duly returned into this court after service of citation duly made and acknowledged (Printed Record, p. 2) and the case was then regularly docketed for hearing in due course.

Missouri Statutes

There are certains statutes in Missouri, which, your Honors will observe from the opinions delivered in the Missouri Supreme Court, are supposed to sanction the proceedings under review.

For the convenience of your Honors we quote those statutes as follows:

(Rev. Stats., Mo., 1899.)

"Sec. 1024. **Foreign corporations to keep office in this State, when—subject to same conditions as domestic concerns—not permitted to encumber property, when.**—Every corporation for pecuniary profit formed in any other State, territory or country, before it shall be authorized or permitted to transact business in this State, or to continue business therein if already established, shall have and maintain a public office or place in this State for the transaction of its business, where legal service may be obtained upon it, and where proper books shall be kept to enable such corporation to comply with the constitutional and statutory provisions governing such corporation; and such corporation shall be subjected to all the liabilities, restrictions and duties which are or may be imposed upon corporations of like character organized under the general laws of this State, **and shall have no other or greater powers.**"

* * * * * * *

"Sec. 1351. **Bridge companies, how formed.**—Any number of persons, not less that ten, **may form a company for the purpose of constructing and maintaining a bridge over any of the streams of water** or any part of such streams which may be **within this State,** for public use, for the crossing of persons or property, according to the provisions of this article."

"Sec. 1352. **May condemn lands.**—In case it may become necessary for any bridge corporation here-

tofore **organized or that may be hereafter organized under section 1351,** to take or appropriate any lands of persons or corporations for **approaches,** road, foot or wagon-ways of such bridge corporation, and the owners of said property can not agree with said corporation upon the proper compensation to be paid, or in case the owner is incapable of contracting, unknown or a non-resident of the State, then the said property may be taken by said bridge corporation in the same manner that is provided for by law in relation to the appropriation and valuation of lands taken for telegraphs, macadamized, graded, plank and railroad purposes."

"Sec. 1353**d. Rights and privileges.**—Any bridge corporation organized under this article shall have the right to issue bonds or other evidences of indebtedness, negotiate loans for the construction of said bridge, secure such indebtedness by deed of trust or mortgage on the property of said corporation, and may consolidate its franchises and property with those of any bridge corporation within this State, or any corporation within an adjoining State, the bridges of which corporations connect."

* * * * * *

It is provided further by the general laws of Missouri governing railroad corporations that, in the exercise of the right of eminent domain, such a railroad corporation may "lay out its road, **not exceding one hundred feet in width**" and construct the same (R. S., Mo., 1899, sec. 1035).

ASSIGNMENTS OF ERROR

The assignments of error made on the application for the pending writ of error present the various points upon which the judgment under review is challenged, and on each of those assignments plaintiffs in error rely on this hearing in the Supreme Court of the United States.

We insert here said assignments as they appear in the Transcript (pp. 198–203).

UNITED STATES OF AMERICA, *ss*:

In the Supreme Court of the United States.

(No. 12089 in the Supreme Court of Missouri.)

R. G. STONE, R. M. FINLEY, and NANNIE E. FINLEY, (Appellants), Plaintiffs in Error,

vs.

SOUTHERN ILLINOIS & MISSOURI BRIDGE COMPANY (Respondent), Defendant in Error.

ASSIGNMENT OF ERRORS BY PLAINTIFFS IN ERROR

Now come R. G. Stone, R. M. Finley and Nannie E. Finley, Appellants in the Supreme Court of Missouri and plaintiffs in error in a writ of error to the Supreme Court of Missouri from the Supreme Court of the United States, duly allowed, in the above entitled cause of Southern Illinois & Missouri Bridge Company (Respondent) and defendant in error ads. R. G. Stone, R. M. Finley and Nannie E. Finley (appellants) in said Supreme Court of Missouri, and plaintiffs in error in said writ of error in the Supreme Court of the United States in said cause, and upon a judgment in the Su-

preme Court of Missouri at the October Term thereof, A. D. 1905, in the above entitled cause, the said R. G. Stone, R. M. Finley and Nannie E. Finley, defendants and appellants in the Supreme Court of Missouri and plaintiffs in error in said writ of error returnable into the Supreme Court of the United States, according to law, **do say**, by their attorneys and counsel in this behalf, that, **in the record and proceedings in said cause there is manifest error** to their prejudice upon the merits of said cause, and **they assign error in said record** and proceedings in this, to-wit:

1

That said Supreme Court of Missouri erred in affirming the judgment of the Circuit Court of Dunklin County, Missouri, and in overruling each of the assignments of error of said plaintiffs in error in said Supreme Court.

2

That the learned opinion of the Supreme Court of Missouri **erred in denying to appellants rights, privileges and immunities claimed by them under the Constitution of the United States** (Article 6) **which makes the Acts of Congress the Supreme law of the land, and under the Acts of Congress regulating the construction of bridges across the Mississippi River** (30 U. S. Stat. L., p. 1151, sec. 9) and under the particular Act of Congress, approved January 26, 1901, authorizing the construction of a bridge across the Mississippi at or near Gray's Point, which prescribed the terms and conditions on which alone the right to construct such a bridge was granted.

3

That the learned opinion of the said Supreme Court of Missouri erred in denying to appellants the equal protection of the law and due process of law as guaranteed by the 14th Amendment to the Federal Constitution and in overruling the 27th assignment of error filed in this Court heretofore, as follows:

> "The judgment of the Circuit Court in this cause is an invasion of the rights, privileges and immunities of defendants under the Constitution of the United States, in that said Circuit Court refused to give effect to the 5th Amendment and 14th Amendment of the Constitution of the United States, declaring that private property shall not be taken for public use without just compensation, or without due process of law."

4

That the learned opinion of the said Supreme Court of Missouri is erroneous in denying to appellants the rights, privileges and immunities accorded to them by the 5th Amendment to the Constitution of the United States, declaring that private property shall not be taken for public use without just compensation, by affirming the judgment of the Circuit Court of Dunklin County, Mo., to the same purport.

5

That the learned opinion of the said Supreme Court of Missouri is **erroneous in holding that the plaintiff is authorized to condemn property as a part of the bridge** authorized by the aforesaid Act of Congress, beyond the lines defined by the said Act of Congress and by the map approved by the Secretary of War under said Act of Congress, and in affirming the judgment of the Circuit Court below to that effect.

6

Because the learned opinion of the said Supreme Court of Missouri is erroneous in **denying to appellants the rights accorded to them by the aforesaid Act of Congress approved January 26, 1901,** whereby the right **to commence** the erection of said bridge structure was limited to one year **"from date of the approval"** of said Act, and the undisputed evidence in this record shows that the construction of **said bridge was not commenced within that period;** and the learned opinion of the said Missouri Supreme Court does not even allude to that point which was made with great distinction in appellants' Brief in said Court (p. 50) but in affirming the judgment of the Circuit Court below it denies to appellants (plaintiffs in error) the rights to which they are entitled under said Act of Congress.

7

The learned opinion of the said Supreme Court of Missouri denies to appellants the immunity claimed by them from condemnation of their real property in this case, which immunity is afforded to them by the Constitution and laws of the United States, in that the said learned opinion of the said Missouri Supreme Court does not grant but **denies the contention made by appellants** to the effect that the extent to which the said bridge might reach, under the said Act of Congress, approved January 26, 1901, **was marked by the map** approved by the Board of Engineers of the United States and the Secretary of War under the Act of Congress authorizing the construction of a bridge at the point in question.

8

That the Circuit (trial) Court below **erred in refusing to declare the law** as requested in the following instruction, asked by defendants (appellants) at the trial, to-wit:

> "The Court instructs the jury that plaintiff, under its charter and the Act of Congress authorizing it to build the bridge and approaches thereto, in view of the testimony submitted in the cause, has only power to appropriate to its use a strip of land extending westward to the bluff for a distance of seven hundred and twenty (720) feet, for the western approach of its bridge (and the width thereof to be two hundred feet) this being the length of the approach as fixed by the Secretary of War, it being his duty by the terms of said Act of Congress to ascertain and fix the length of said approach.
>
> And you are further instructed that you will fix and assess such damages in favor of the defendants against plaintiff, for said strip of land, as you may consider they have sustained by reason of the appropriation thereof."

And that the Supreme Court of Missouri erred in affirming said ruling by affirming said judgment of said Circuit Court, and thereby depriving appellants (defendants) of their rights under the Constitution and Acts of Congress of the United States claimed at the time by appellants in said Circuit Court and in said Supreme Court of Missouri.

9

That the Circuit Court below erred in said cause by **assuming jurisdiction to condemn** and to appropriate the land of defendants (appellants) **beyond the limits**

defined for said bridge and its approaches by the Act of Congress of the United States, approved January 26, 1901, and **beyond the limits therefor fixed by the map approved by the Secretary of War,** pursuant to said Act of Congress; and the Supreme Court of Missouri erred in affirming in that particular the decision and judgment of said Circuit Court.

10

That said Circuit Court below erred in said cause **by deciding adversely to the second defense set up in defendants'** (appellants') **amended answer** which defense in substance **asserted the claim of said defendants to immunity from having their said land** (condemned by the proceedings herein) **subjected to appropriation against their will,** and invoked the **Federal statute authorizing the construction of said bridge** (approved January 26, 1901) and the map (approved thereunder by the Secretary of War) **as a bar to the taking of their land** for a bridge approach **beyond the line marked therefor** by said map on the Missouri side of the river; and the Supreme Court of Missouri erred in affirming said ruling and decision of said Circuit Court to that effect, and thereby depriving appellants and defendants of rights secured to them by said Act of Congress.

11

That the said Circuit (trial) Court erred in said cause by giving the following instruction asked by plaintiff (respondent) against the objection and exception of defendants (appellants), to-wit:

> "The jury will consider the benefits, if any, and the disadvantages, if any, resulting to the remainder of defendants' said property from the ap-

propriation by plaintiff Bridge Company, of the strip of land in question for the purpose of its bridge and approaches. The benefits to be considered and allowed by the jury are the direct and peculiar benefits, if any, which result to the remainder of defendants' said property and not the general benefits which defendants derive in common with the other land owners in the vicinity from the building of the bridge and its approaches."

That in giving said instruction said trial court authorized the taking of defendants' land without just compensation and thereby deprived them of their rights under the 5th Amendment to the Constitution of the United States invoked by said defendants in said trial court; and the Supreme Court of Missouri erred in affirming said ruling.

12

That the Circuit Court and the Supreme Court **erred in this cause by deciding in effect that the petition for condemnation herein was sufficient in law,** when said petition **fails to allege facts essential to show compliance with the said Act of Congress** (approved January 26, 1901) authorizing the construction of said bridge, without which compliance the said structure is not a lawful structure.

13

That the petition in this cause is insufficient in law to authorize condemnation of said defendants' land sought thereby to be appropriated; and said Circuit and Supreme Courts of Missouri erred in deciding said petition to be sufficient and thereby denied the defendants (appellants) the right they invoke to protection of the 5th Amendment to the Federal Constitution.

14

Upon the undisputed facts neither the Circuit nor Supreme Court of Missouri had power to authorize the taking of the land of defendants (described in the petition) and the taking thereof by these proceedings by the decision of said Courts deprives defendants of rights secured by the 5th and **14th amendments to the Constitution** of the United States.

15

The Supreme Court of Missourt erred in deciding that the commissioners' report of the assessment of damages was competent evidence at the trial of said cause, and in affirming the judgment of the said trial court, admitting same in evidence against objection of defendants for incompetency and irrelevancy.

16

That the (trial) Circuit and Supreme Courts of Missouri erred in holding that **plaintiff (respondent) had the power of eminent domain** and the right to condemn the Missouri land of defendants (mentioned in the petition herein) by virtue of a charter granted by the State of Illinois; and thereby depriving defendants of the right and **immunity they claimed** (under 30 U. S. Stat. at Large, 1151) in respect of **bridges over navigable rivers.**

17

Under the Constitution of the United States, which makes the Acts of Congress **the supreme law of the land** (Const. U. S., Art. 6) and the action of the Secretary of War under the Act in this case, there was **no power in the Courts of Missouri to condemn the**

strip of land of the defendants described in the judgment herein, beyond seven hundred and twenty (720) feet from the Mississippi River on the Missouri side.

18

The Circuit Court **erred in submitting the cause to the jury,** under the documentary and undisputed evidence to the effect that plaintiff has **not complied with the Act of Congress** of January 26, 1901, which alone authorizes the construction of said bridge, and the Supreme Court erred in affirming said ruling.

19

The judgment of the Circuit and Supreme Courts in this cause is an invasion of the rights, privileges and immunities of defendants under the 14th Amendment of the Constitution of the United States, declaring that no person shall be deprived of property **without due process of law.**

20

The judgment of the Circuit and Supreme Courts in this cause is an invasion of the rights, privileges and **immunities of defendants under the Constitution of the United States,** in that said Courts **refused to give paramount force to the Act of Congress** in evidence, approved January 26th, 1901, and thereby the Circuit and Supreme Courts refused to give defendants the benefit of the Constitution of the United States and Article 6 thereof, declaring that said Constitution and the laws of the United States made in pursuance thereof shall be the supreme law of the land.

21

The judgment of the Circuit and Supreme Courts in this cause is an invasion of the rights, privileges and

immunities of defendants under the Constitution of the United States, in that said Circuit Court refused to give effect to the 5th Amendment and 14th Amendment of the Constitution of the United States, declaring that private property shall not be taken for public use without just compensation, or without due process of law.

22

The judgment of the Circuit and Supreme Courts in this cause is an invasion of the rights, privileges and immunities of defendants under the Federal Constitution because said judgment does not accord supreme effect to the Act of Congress aforesaid.

23

The trial court erred in permitting the compensation, which defendants were to be paid for their land, to be reduced by supposed "benefits" to other land of defendants, contrary to the terms of the Constitution of Missouri and to the provisions of the Federal Constitution above cited.

For the foregoing prejudicial errors, and each of them, affecting the merits of this cause (appellants) plaintiffs in error pray a reversal of the judgment of the said Circuit Court of Dunklin County, Missouri, and the judgment of affirmance thereof by the Supreme Court of Missouri.

And the said R. G. Stone, R. M. Finley and Nannie E. Finley as plaintiffs in error pray that the judgment aforesaid, for each one of the errors aforesaid and for other errors in the records and proceedings in said cause whereby the said plaintifis in error have been by

said judgment **deprived of their rights, privileges and immunities as citizens of the United States,** and for each of the errors and matters above assigned, be reversed, annulled and held for naught, and that the said plaintiffs in error may be restored to all things which they have lost by reason of said judgment of the said Supreme Court of the State of Missouri and by the judgment of said Circuit Court of Dunklin County, Missouri, affirmed thereby.

R. G. STONE,
R. M. FINLEY &
NANNIE E. FINLEY,
Plaintiffs in Error,
BY SHEPARD BARCLAY,
Their Attorney and of Counsel.

STATE OF MISSOURI, *ss:*

The foregoing assignment of errors has been presented and filed, along with the petition for writ of error by counsel for appellants (plaintiffs in error) in the said cause mentioned therein, this 15th day of March, 1906.

THEODORE BRACE,
Chief Justice of the Supreme Court of Missouri.

Attest, Seal of said Court,
JNO. R. GREEN,
Clerk of the Supreme Court of Missouri.

For convenience of treatment of the case here, we condense the foregoing assignments into shorter form to exhibit the final contentions of plaintiffs in error, concerning the vital points of controversy.

SPECIFICATIONS OF ERROR

The plaintiffs in error specify the **following errors** in the judgment, record and proceedings of the SUPREME COURT OF MISSOURI and by reason of each thereof pray that the judgment of said Court be reversed with such directions touching further proceedings as may be just.

1st Specification of Error

The judgment under review is erroneous in that the learned opinion and judgment of the Supreme Court of Missouri erred in denying to plaintiffs in error rights, privileges and **immunities** claimed by them under the Constitution of the United States, which makes the Acts of Congress the supreme law of the land, and under the Acts of Congress **regulating the construction of bridges** across the Mississippi River (30 U. S. Stat. L., p. 1151, sec. 9) and under the particular Act of Congress, approved January 26, 1901, authorizing the construction of a bridge across the Mississippi at or near Gray's Point, which prescribed the terms and conditions on which alone the right to construct such a bridge was granted.

Plaintiffs in error claim that the legislation of Congress authorizing the construction of this bridge is **exclusive of any legislation** by the State of Missouri; and that **by force of said Federal legislation**, the **limits of the bridge and approaches** are defined (as shown by the map and design approved by the Secretary of War) to an area (on the west side of the Mississippi River) distant 720 feet from the river bank. Hence, **under that Federal legislation,** land of the plaintiffs in error beyond

that limit can not be condemned as part of the bridge approach. The Federal law, **having treated that subject definitely,** should be held **to exclude** any authority of Missouri law to condemn land for this bridge over the Mississippi **beyond the area marked by the Act of Congress** and the map of the Bridge Company approved by the Secretary of War (as provided by the special Act which alone authorizes the bridge to be constructed).

31 U. S. Stat. L. 741, ch. 181
Bridge Co. v. U. S., 105 U. S. 475
Wisconsin v. Duluth, 96 U. S. 387

The record proper in the case, the petition of defendant in error (on which the proceedings are based) the rulings upon instructions at the trial (preserved for review by bill of exceptions) and various motions by the plaintiffs in error, present this question for review.

2nd Specification of Error

The judgments of the Circuit and Supreme Courts of Missouri are erroneous because the learned opinion of the said Supreme Court of Missouri erred in denying to plaintiffs in error the equal protection of the law and **due process of law** as guaranteed by the 14th Amendment to the Federal Constitution, and in overruling the 27th assignment of error filed in the Missouri Supreme Court heretofore, to that effect.

Plaintiffs in error respectfully claim that proceedings, under **pretended sanction of Missouri statutes,** to condemn a BRIDGE APPROACH **as part of a bridge** over the Mississippi, which part is **not approved** or **sanctioned** by the Federal Act of Congress applicable to the precise facts in judgment, is not "**due process of law**", and

takes the land for **private use**, as there is no authorized **"public use"** for the taking.

Muhlker v. Railroad, 197 U. S. 544
Railroad v. Nebraska, 164 U. S. 403

3d Specification of Error

The judgment under review is erroneous because the learned opinion of the Supreme Court of Missouri denied to plaintiffs in error the rights accorded to them by the aforesaid Act of Congress approved January 26, 1901, whereby the right to commence the erection of said bridge structure was limited to one year "from date of the approval" of said act, and the undisputed evidence in this record shows that the construction of said bridge was not commenced within that period; and the learned opinion of the said Missouri Supreme Court [redacted] in affirming the judgment of the Circuit Court below denies to appellants (plaintiffs in error) the rights to which they are entitled under said Act of Congress, which with the Constitution forms the "Supreme Law" of the land.

U. S. Const., Art. 6

The undisputed evidence **given by the engineer of the Bridge Company** is that they commenced "to build the bridge", "along in April", 1902 (Printed Record, p. 23).

But the Act of Congress required the **"construction** of the bridge" to be **"commenced within one year"** from the "date of approval" of this Act (January 26, 1901). It was not begun until April, 1902.

The terms of such a statute impose conditions imperative. Not only must they be obeyed, but any petition for relief based on such a Federal law, **involving the taking of private property** without consent of the owner, should **affirmatively** show that the conditions have been performed.

Penn. Ry. Co. v. Balto. & N. Y. Ry. Co., 37 Fed. 129

In the case at bar, not only is there **no showing of compliance** with the Act, as is essential, but there is **affirmative** showing of **non-compliance** (Printed Record, p. 23).

This point was raised in many ways in the trial court as is shown by the record proper as well as in the Missouri Supreme Court.

4th Specification of Error

The trial court erred in refusing by an instruction to declare the law to be as requested by defendants (now plaintiffs in error) to-wit:

> "The Court instructs the jury that plaintiff, under its charter and the Act of Congress authorizing it to build the bridge and approaches thereto, in view of the the testimony submitted in the cause, has only power to appropriate to its use a strip of land extending westward to the bluff, for **a distance of seven hundred and twenty (720) feet,** for the western approach of its bridge (and the width thereof to be two hundred feet), this being the **length of the approach as fixed by the Secretary of War,** it being his duty by the terms of said Act of Congress to ascertain and fix the length of said approach.
>
> And you are further instructed that you will fix and assess such damages in favor of the defend-

ants against plaintiff, for said strip of land, as you may consider they have sustained by reason of the appropriation thereof."

And the Supreme Court of Missouri erred in approving said ruling by affirming said judgment of the Circuit Court, and thereby depriving plaintiffs in error (defendants below) of their rights **under the Constitution and Acts of Congress of the United States,** claimed at the time by plaintiffs in error, in said Circuit Court and in said Supreme Court of Missouri, with all proper formalities and exceptions required by the procedure and practice of said Courts.

The right or immunity claimed by plaintiffs in error is the right to have the Act of Congress and the map defining the bridge approach in Missouri respected and OBEYED, touching the extent of the **"bridge and approaches thereto"**, as pointed out in the first section of the Act authorizing the construction thereof.

"The question is one of *power*". The State of Missouri has no power to take land for purposes of an approach to a bridge over the Mississippi except within the limits of the bridge as fixed by the federal laws.

Chicago v. Law, 144 Ill. 569

5th Specification of Error

The judgment to which the writ of error is directed is erroneous and an invasion of the rights, privileges and immunities of plaintiffs in error under the Constitution of the United States, in that said Courts **refused to give paramount force to the Act of Congress in evidence,** approved January 26th, 1901, and thereby the Circuit and Supreme Courts refused to give defendants

the benefit of the Constitution of the United States and Article 6 thereof, declaring that said Constitution and the laws of the United States made in pursuance thereof shall be **the supreme law of the land.**

The decisions of the Missouri State Courts are also directly at variance with the general Act of Congress (A. D. 1899) which forbids persons constructing any **"bridge"** over any **"navigable water"** of the United States, **"to deviate from such plans"** (approved by the Secretary of War) therefor, "either before or after completion of the structure", without like approval of any proposed change in such plans.

30 U. S. Stat. L. 1151, sec. 9

The Act last cited declares that **"it shall not be lawful"** to construct any such bridge until the plans have been approved by designated Federal authorities. The Bridge Act marks the limits of authorization, and no State can enlarge or restrict those limits, because the Federal law is of paramount authority.

An **"approach"** is an essential part of the bridge.

Francis v. Township, 179 Pa. 195

Whitcher v. Sommerville, 138 Mass. 455

The 5th section (of the Act itself authorizing this structure) requires the **"approaches** to the bridge, built under this Act", to be **"designated,"** and constructed so as not to interfere with the free discharge of the river, etc. The western approach was duly "designated", but where is the authority **for its present enlarged dimensions?**

6th Specification of Error

The Missouri Statutes relied on by defendant in error (R. S., Mo. 1899, secs. 1352, 1024) do not purport to

confer authority to condemn land for an approach to **a bridge over the Mississippi River.** If construed to confer such authority, they would be **unconstitutional** as in conflict with the Federal organic and statutory law, giving Congress authority to enact the **"supreme law"** on that subject.

The decision of the State Supreme Court to the contrary is not warranted, as against the claim of the plaintiffs in error to the protection of the "Supreme Law" applied to the facts here in judgment. There is **no iota** of the only authority which can sanction the construction of a bridge, over the Mississippi, to support the appropriation of the land of plaintiffs in error for bridge purposes.

The pretended authority expressly confines the extent of the bridge within narrower bounds than those which the Missouri Courts suffered defendant in error to take by the judgment under review.

The verdict and record proper disclose this error to which plaintiffs in error excepted in many forms duly preserved by bill of exceptions.

7th Specification of Error

The petition **does not state facts sufficient to authorize the taking** of the land in question under the Federal statutes cited. It does not aver that the land is sought to be acquired "*for public use*", and it does not aver the facts showing compliance with the Federal Act prescribing the terms on which alone **"and subject to its limitations"** (sec. 2) the bridge was authorized.

N. Y. Central case, 5 Hun 86
Railroad v. Railroad, 37 Fed. 129
Miller v. N. Y., 109 U. S. 385
C. & N. W. Ry. v. Galt, 133 Ill. 657
Evergreen Assn. v. Beecher, 53 Conn. 551

BRIEF OF THE ARGUMENT

I

The laws of Congress governing the location and limits of the bridge and approach in question are paramount.

The defendant in error has no power to condemn that part of the land lying west of the 720-foot **approach**, as fixed by the Secretary of War, for the purpose of constructing and operating "terminal yards" and railroad terminals, or as part of the bridge.

The Act of Congress empowered the Bridge Company to construct and operate a bridge and approaches thereto and required it to submit to the Secretary of War a map and drawing of the bridge and approaches, to be referred to the Board of Engineers, U. S. Army, for examination and report. To be a **lawful structure** the bridge must be built in accordance with the plans as recommended by said Board of Engineers and the Secretary of War and all requirements of the Act observed.

Plaintiffs in error introduced in evidence the certificate of the Secretary of War, showing that the western approach to the bridge (as fixed by the Bridge Company and approved by the U. S. officers mentioned in the Act of Congress) extended only 720 feet westwardly from the west bank of the river. This appeared not only by the SCALE on the face of the map, but by the undisputed evidence at the trial.

There is a bluff some 60 or 70 feet high, 720 feet back from the bank of the river. From the bluff westwardly the land is broken and hilly. Westwardly through this

broken and hilly country, defendant in error laid off a STRIP 200 FEET WIDE (the bridge is only 29 feet wide) across the land, extending back to the Cotton Belt Railroad, a distance of over 2 miles.

The testimony of experts, civil engineers and experienced railroad men, taken on the trial, establishes that, as a matter of fact, the approach to the bridge ended when the bluff was reached, at the end of the 720 feet, as defined by the map approved by the Secretary of War. The land from the top of the bluff westwardly, beyond 720 feet, cannot be taken lawfully as part of the bridge under the Act of Congress, and map approved by the Secretary, because excluded therefrom by their very terms.

The drawing which defendant in error offered to the Federal engineers, and which the Secretary of War (now the Secretary of State) approved, is reproduced in the record here (p. 68). It defines the western approach at 720 feet from the western pier (No. 6) as shown on the map. When defendant in error submitted that map and secured its approval as an accurate delineation of the western approach to the bridge, it **became bound by its own act until**, at least, the Federal supervising authority approved a change.

Lake Shore, Etc., Co. v. B. & O. Co., 149 Ill. 272

30 Stat. L. (U. S.) 1151, sec. 9

It was not competent for defendant in error of its own motion, and without Federal sanction, to tack on to the bridge a great bunch of **railway terminal facilities** called "*terminal yards*" extending more than two miles from the river, and dub the result a "**bridge ap-**

proach". The genial and learned counsel, whose name is subscribed to the petition, had a grim conception of the humor of his effort in that direction when he described the necessity which impelled the "taking" of the real estate to be **"for the laying of tracks and the handling of business over and across plaintiff's bridge"**. A bridge approach more than two miles long was never approved by the Federal authority in this case. On the contrary, the official approved drawing limited the approach to 720 feet from the last western river pier.

The Secretary of War has the right, by the charter of the Bridge Company and the Act of Congress, to regulate the "reasonable tolls" for the use of the "bridge and approaches"; but if the official **approach** ends at the 720-feet limit and defendant in error may, nevertheless, abrogate that limit and extend its **"terminal yards"** (by the same supposed authority only) under the stimulus of the law of eminent domain, will the Secretary of War, let us ask, have the power to regulate the tolls over the "terminal yards" as well? That may be an interesting question before many years.

To us it seems clear that, under the Federal laws, whose construction must determine this case, it is a serious error to suppose that the drawing approved by the Secretary of War does not limit the right to extend the bridge approach beyond the lines marked therefor in that drawing.

The claim that the State statute attempts to provide for such bridges by general laws is a grave error. Section 1351 (R. S. 1899) **does not authorize the formation of corporations to build bridges across the**

Mississippi. The Missouri State Constitution expressly authorizes special legislation on that subject because it is necessarily the only practicable legislation. The Missouri Constitution declares that special laws may be enacted **"for the erection of bridges crossing streams which form boundaries between this and any other State"** (Const., Mo., Art. 4, Sec. 53).

The general law for bridge companies does not apply, and **was not intended to apply to bridges crossing the Mississippi.** It applies, by its express terms, to the construction of bridges "over any of the streams of water or **any part of such streams which may be within this State"** (R. S. 1899, sec. 1351). With the Constitution of Missouri and this law before us is it not certain that a corporation to build a bridge over the Mississippi was never intended, *under* this law, to be created?

But if such was the intent, such a statute so construed would be void **as unconstitutional because in conflict with the terms of the Federal Act of Admission of Missouri to the Union,** with the Missouri Constitution which confirms those terms concerning the Mississippi River, which is a public "common highway", free to all citizens of other States as well as of Missouri (R. S. 1899, p. 57, sec. 2, Const. Mo., Art. 1, sec. 1) and in conflict with the Federal Acts cited which are of paramount force as the "Supreme Law" sanctioned by the Constitution of the United States.

Congress alone has the right now to authorize a bridge *across* the Mississippi, for our State boundary is the middle of its main channel (R. S., Mo., 1899, p. 55, 51 sec. 2). Missouri has no State jurisdiction **beyond that line** to authorize a corporation to construct a perma-

nent structure which might impede navigation of that stream. The Federal law on that subject is now too clear to admit of doubt, and it is likewise conclusive (as it seems to us) of the case at bar.

30 U. S. Stat. L., p. 1151, sec. 9
South Carolina v. Georgia, 93 U. S. 4
Green Bay Co. v. Paper Co., 172 U. S. 81

Under the existing Federal law Congress has exercised its jurisdiction over navigable waters by **forbidding the erection of such structures without previous authority** given by Congress. The Act in which this most important requirement is fully defined is as follows:

> "That it shall not be lawful to construct or commence the construction of any **bridge,** dam, dike, or causeway over or in any port, roadstead, haven, harbor, canal, **navigable river,** or other navigable water of the United States until the consent of Congress to the building of such structures shall have been obtained and until the plans for the same shall have been submitted to and approved by the Chief of Engineers and by the Secretary of War: *Provided*, That such structures may be built under authority of the legislature of a State across rivers and other waterways the navigable portions of which lie wholly within the limits of a single State, provided the location and plans thereof are submitted to and approved by the Chief of Engineers and by the Secretary of War before construction is commenced: *And provided further*, That when plans for any bridge or other structure have been approved by the Chief of Engineers and by the Secretary of War, it shall not be lawful to deviate from such plans either before or after completion of the structure unless the modification of said plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War." (30 Stat. L., 1151.)

The legislation of Congress on this subject necessarily prohibits the operation of any local statute not in harmony therewith.

The entire approach to every such interstate bridge is considered by the legislation of Congress as subject to the supervisory control of the Federal authority. When the bridge is **once located and defined,** the same can not be changed without express authority.

In re Bridge Co., 108 N. Y. 483

The obvious practical necessity of having the entire structure (including the **approaches)** subject to Federal jurisdiction, is the idea underlying the unmistakable purpose of the Federal law to have the structure carefully and fully **defined by plans approved** by the highest Federal scientific authority, and to **remain as so designed.** If it **"shall not be lawful to deviate from such plans, either before or after completion of the structure"** (as the Federal law commands) how can any State authority enlarge the scope of those plans, **outside their plain terms,** as is claimed by defendant in error in this case?

II

The Acts of Congress, authorizing the construction of this bridge, operate as **limitations** *on the area of the structure (and its approaches mentioned therein as a part thereof).*

The Federal Act authorizing this bridge does not grant the right of condemnation of land for the purposes of the bridge. It mentions the defendant in error, the Bridge Company, as **"a corporation created and organized under and by virtue of the laws of** *the State of Illinois"* (sec. 1).

Those laws **do not confer on a bridge company** the right of **eminent domain, even in Illinois.**

Rev. Stats., Illinois, 1899, ch. 32, sec. 1, p. 433
Same statute in evidence in this case (Record, p. 83)
Ill. State Trust Co. v. R. R., 208 Ill. 420

The terms of the Act of Congress descend into minute particulars, regulating the form and extent of the proposed structure, and the bridge is required to conform to those terms. To quote (section 7):

> "the proposed bridge shall be a lawful structure **only when built in accordance with the plans** as recommended by the said Board of Engineers * * * and the Secretary of War."

Part of those plans limit the area of the western approach to a space of 720 feet from the river bank, as shown by the plat in evidence (Printed Record, p. 68). That plan or design, while it **authorizes** the construction of the western approach to the bridge, as part of the latter, to the extent of 720 feet from the river, likewise **limits** the approach **within that area.** It is a PROHIBITION of any right by the Bridge Company to claim, as part of the **"bridge and approaches thereto"** (sec. 1 of the Act of Congress, 1901) any **area in excess** of that defined under the Act which forms the sole authority for erecting any part of the structure.

The Missouri statute in regard to local bridge companies recognizes the Federal statutes as paramount by excluding any authority for condemnation by any bridge company (organized under general law) to construct a bridge *across* the Mississippi River. The Mis-

souri statute **could not,** if it would, apply to more than **half the river** and does **not authorize** the construction of such a bridge across the Mississippi. On the contrary the State Constitution expressly takes that subject out of the domain of general legislation and authorizes special legislation **"for the erection of bridges crossing streams which form boundaries between this and any other State."**

Mo., Constitution, 1875, Art. 4, sec. 53
Mo. R. S. 1899, sec. 1351

The Missouri statute in regard to bridge companies (section 1351) if intrepreted by any State authority, however high, to authorize the construction of a bridge **across the Mississippi river,** is unconstitutional because in conflict with the Federal Constitution and laws which forbid any State from authorizing the erection of a bridge across the Mississippi River, without prior congressional sanction.

Act of Admission (R. S. 1899, p. 51, sec. 2)
30 U. S. Stat. L., p. 1151, sec. 9

The bridge company Act of Missouri does not confer the power of Eminent Domain on a corporation organized in another State, because it expressly provides that the condemnation of land which it authorizes is available only by bridge companies **"organized under section 1351".** The expression of those companies excludes others, but even if construed to confer that power, the State statute must yield to the **obvious limitations** imposed by the Federal laws cited.

The provisions of section 1351–1352 (Mo. R. S. 1899) apply **only to corporations organized under the Mis-**

souri law, and being particular and special provisions, they are to be given force rather than general language in sec. 1024, which some suppose to imply a grant of the power of Eminent Domain to foreign bridge companies by virtue of language which declares that foreign corporations shall **"have no other or greater powers"** than corporations **"of like character organized under the general laws of this State".** The more particular provisions of the statute in regard to bridge companies is paramount to the general language of the section governing all sorts and conditions of foreign corporations, even if the general language of the latter might otherwise have such effect.

Broom's Maxims, *p. 646
2 Hughes, Proced. p. 632
Rutherforth's Insts., p. 431
Grandy v. Casey, 93 Mo. 595
Trust Co. v. Railroad, 70 N. E. 357

A foreign corporation authorized to construct a bridge across the Mississippi River *by virtue of an Act of Congress* is not a corporation **"of like character"** to one organized under the laws of Missouri; because the general law of Missouri does not authorize the incorporation of a company to construct a bridge across the Mississippi River, **and could not do so under the existing Federal law.**

Act March 3, 1899, 30 U. S. Stat. L., p. 1151, sec. 9
6 Fed. Stats. (annotated) p. 805, sec. 9
Ill. State Trust Co. v. R. R., 208 Ill. 420

Under the Constitution and laws of the United States, defendant in error had no right to take any land beyond

"the territorial limits and conditions in said Act fully set out" (to quote the very words of its petition), but it has done so, nevertheless.

Before the bridge construction was begun, the Bridge Company defined the "territorial limits" of the western approach of the proposed bridge, by the drawing and plan thereof which was submitted to the Secretary of War, under the Act of Congress (authorizing the construction of the bridge). That said drawing and plan of the western approach of the proposed bridge were approved by the Secretary of War, January 16, 1902. According to said plan and drawing the western approach to said bridge **was not to include the whole strip of land sought to be taken by this suit.** No State Court of Missouri had jurisdiction to condemn the land of defendants or other persons, **beyond the boundaries fixed by said plan and drawing** of the western approach to said bridge, under said Act of Congress. Any bridge over this great river, other than that whose *integer* is defined by the map approved by the federal authorities, **"it shall not be lawful to construct"**, according to the very words of the Act of Congress.

30 U. S. Stat. L., p. 1151, sec. 9

The strip of land sought to be condemned under the petition is part of the so-called approach of the bridge which extends for some two and one-half miles west of the river. Plaintiffs in error say that it is not "*due process of law*", under the Fourteenth Amendment to the Federal Constitution, for the Bridge Company to appropriate any land beyond that defined as the bridge approach **in its own drawing and plan,** approved by the Secretary of War under said Act of Congress.

Muhlker v. Railroad, 197 U. S. 544

The said drawing and map were competent evidence.

Mo. R. S., 1899, sec. 3098
Wood v. Nortman, 85 Mo. 298

The Bridge Company has no power to condemn property in Missouri as the law now stands.

1st. The Missouri legislature, in delegating the power of eminent domain to corporations, expressly limited the right to "road, telephone, railroad, telegraph, or other corporations *created under the laws of this State* for public use, etc.".

Sec. 1264, Vol. 1, R. S. Mo. 1899
Holbert v. Ry. Co., 45 Iowa, top p. 27
Sec. 1352, R. S. Mo. 1899, relating to bridge corporations, confines the right to condemn to **"bridge corporations organized under sec. 1351"**.

A foreign corporation is not given any power to condemn by the above statutes. The power can not be implied; it requires an express legislative grant. All grants of govermental power are strictly construed, especially with respect of the power of eminent domain.

Lewis, Eminent Domain, Vol. 1, secs. 240, 253, 254
West. Union Co. v. Penn. R. R., 195 U. S. 540

2nd. The only thing upon which defendant in error bases its alleged right to condemn is the fact that it filed a copy of its Illinois charter with the Secretary of State of Missouri, and obtained a certificate from the Secretary of State "authorizing it to do business therein", as required by Sec. 1025, Vol. 1, R. S., Mo., 1899.

Does this give it power to condemn?

(*a*) It has no such power on the principle of comity between States; it will never be presumed that Missouri has delegated any part of its *sovereignty* to a foreign corporation. Judge Thompson says:

"It may be stated with confidence in every case that this power can not be exercised by a corporation created under the laws of one State without the consent of the legislature of that other State, *affirmatively expressed.*"

6 Thompson, Corporations, p. 6310

(*b*) To construe Sec. 1025 of Missouri as an affirmative grant of power to condemn, any Court must ignore a fundamental command of statutory construction, namely, to give effect to the *purpose* the legislature had in view in enacting the statute.

Section 1025 is not a *granting* statute, it is a *restraining* statute. It was not enacted for the purpose of conferring power on foreign corporations, but to regulate and restrain them in Missouri to the powers which they were **already exercising,** under the principle of comity between States. Having **no power to condemn** under the doctrine of comity, this statute, regulating and restraining the exercise of ordinary powers in Missouri, does not confer upon it any sovereign power whatever.

Statutes similar to section 1025 have existed in the different States of the Union for more than 30 years, but we have been unable to find where any Court has ever held that such legislation gave a foreign corporation the right of **eminent domain** or any other prerogative power, except the majority opinion of the Missouri Supreme Court in the case at bar. One directly to the contrary is

Ill. State Trust Co. v. R. R., 208 Ill. 420

We understand such legislation as intended to restrain foreign corporations and keep them within the **bounds of the ordinary privileges** accorded them by comity; and that such legislation was never intended to grant any additional power—certainly no **prerogative power.**

Tiedemann, Police Powers, Vol. 2, p. 983, sec. 213 and note 1.

Thompson, Private Corporations, Vol. 4, secs. 5470 and 5471

Attorney General v. Fidelity, Etc., Ins. Co., 6 Am. R. R. and Corp. Reports, p. ~~655~~ 605 and note 1

Hollingsworth v. Parish of Texas, 17 Fed. Rep., pages 114 and 115

22 Am. & Eng. Ency. of L. (2d ed.) page 916 and notes

Talbot *et al.* v. Hudson, 1 Thayers Cases Constit. Law, page 1017

Paul v. Virginia, 8 Wall. (U. S.) 168

Daggs v. Ins. Co., 136 Mo., p. 391

State v. Stone, 118 Mo., p. 401

List v. Com., 118 Pa. St. 327

Murfree on Foreign Corp., p. 98, sec. 119

Am. U. Telephone Co. v. W. U. Tel. Co., 67 Ala. 26

The Supreme Court of Illinois, construing a statute similar to the one in question, in Stevens v. Pratt, 101 Ill. 217, says: "The language of this statute is entirely that of *regulation and restriction* and not that of grant or prohibition. No corporation is granted the right to do business in this State."

3rd. But even if it should be held that the Missouri legislature meant to confer the right of eminent domain, the Bridge Company would still be without power to condemn, for the following reasons:

(*a*) Even if it should be held that Missouri has conferred upon it the right of eminent domain, it could not lawfully exercise the power in Missouri without showing beyond doubt its power to condemn property in Illinois, under the law of its being and also conformity to the federal law without the sanction of which no such bridge or approaches as are in question here could **lawfully** be **constructed.**

Bank of Augusta v. Earle, 13 Pet. 519
Morawetz on Corporations, secs. 960–963
Beach on Corporations, sec. 417, p. 690 (1891)
Canada Southern R. R. Co. v. Gebhard, 109 U. S. 537

Although the burden was on defendant in error to prove that it had power to condemn under the laws of Illinois, it has never produced any evidence whatever to show it had such power there. Even when the right of a foreign corporation to exercise merely usual and ordinary corporate powers is questioned, **the burden is on the corporation to prove its incorporation,** and also the extent of its powers under the laws of the State where it was created.

Clark & Marshall on Corporations, Vol. 1, sec. 178 (1901)

How much more imperative, therefore, it is that when it claims special and extraordinary franchises the burden is upon it to prove the grant of such franchises!

(*b*) Examination of the laws of Illinois will show that this corporation has no power to condemn in that State.

It claims to have been incorporated September 28th, 1900, under an Act of the General Assembly of Illinois entitled, "An Act Concerning corporations, approved April 18th, 1872, and all Acts amendatory thereof".

This Act of April 18th, 1872, as amended, and as it existed at the date of the alleged incorporation of this Bridge Company, will be found in Chapter 32, Hurd's Rev. St. Illinois, 1899, but although this chapter is broad enough to include a railroad bridge like that mentioned in the charter of defendant in error there is no authority conferred on it to condemn property.

Section 1 of said Chapter 32 provides "that corporations formed for the purpose of constructing railroad bridges shall not be held to be railroad corporations". This Bridge Company can not claim the right to condemn given to railroad corporations under the laws of Illinois.

The only other statutes of Illinois bearing on this subject are:

"An Act for the incorporation of Bridge Companies, approved April 10, 1872", which is almost identical with an Act of the Missouri Legislature enacted for the same purpose, approved March 19th, 1866; but this Illinois Act of April 10th, 1872, was repealed at a revising session of the Illinois legislature under the Constitution of that State of 1870.

See R. S. of Illinois 1874, sec. 832, p. 1044.

Chapter 137, R. S. Illinois 1874, relating to "toll bridges", over which the County Courts have control:

Section 14 of Chapter 137 and section 22 of Chapter 138 R. S. Ill. 1874, entitled "toll roads", authorize condemnation of land for "toll bridges", but the statutes referred to give no power whatever to this Bridge Company to condemn, and have no reference to the defendant in error corporation or any such bridge as it proposes to construct.

We treat this question as though those statutes of Illinois might be considered, but as the record stands now, the only Illinois statute was introduced by plaintiffs in error and it shows no right of Eminent Domain.

An examination of the laws of Illinois will, we believe, establish beyond dispute that the failure of defendants in error to introduce any of the laws of that State in evidence was because there is no law in that State authorizing it to condemn property; but in any event, whatever its power may be in Illinois, it has no such power in Missouri unless conferred upon it by some **valid** Act of the General Assembly of Missouri. No such power is given it by any express act, terms, nor, with all due respect, do we think it should be implied.

President v. Trenton Bridge Co., 13 N. J. Eq. 50

Clark & Marshall on Private Corp., sec. 854, p. 2734

Attorney General v. Delaware, Etc., Railway Co., 27 N. J. Eq. 647 and 648

Lehigh Railway Co. v. Mutchler, 42 N. J. L. 461

4 American & English Enc. of Law (2nd ed.), p. 930, par. 3 and notes

Middle Bridge Corp. v. Marks, 26 Me. 326

Luxton v. North River Bridge, 153 U. S. 530
State v. Boston, Etc., Railway Co., 25 Ver. 441 and 442
Crosby v. Hanover, 36 N. H. 422
Saunders v. Bluefield Water Works Co., 58 Fed. Rep. 138
1 Lewis on Em. Dom. 588
13 Am. & Eng. Enc. of Law (2nd ed.), p. 858, Par. 7
N. Y. & Erie Ry. Co. v. Young, 33 Penn. St., p. 180

Even if sec. 1024 of the Missouri foreign corporation law can be construed to grant a right to condemn, this Bridge Company would still be without such power, for the reason that under this very statute it can have "no other or greater powers" than "corporations of like character organized under the general laws of this State".

Plaintiff claims to be a corporation of the same character as corporations organized under sections 1351, 1352 and 1353, Vol. 1, R. S. Mo. 1899; but the terms of these sections do not include railway bridges ACROSS the Mississippi River. The history of these sections shows the intention of the Missouri Legislature to exclude railway bridge corporations from organizing thereunder, and from the power to condemn therein provided for.

Under the present Constitution of Missouri, adopted in 1875, sec. 53, Art. IV, bridges across navigable streams forming boundary lines of this State may be built under *special legislation*. In the revision of 1879 the above-mentioned sections 1351, 1352 and 1353 (originally sections 16, 17, 18 and 19 of an Act approved

March 19th, 1866, entitled "Manufacturing and Business Companies") were reduced to their present form. By this revision the clause in the original act referring to *railroad bridges was cut out*. The law was left as it now stands, authorizing the construction of bridges "over the streams of water or any part of such streams which may be within this State for public use *for the crossing of persons and property*, and the condemnation of property for "approaches, *road*, *foot or wagon ways*" for such bridge.

Our purpose in re-asserting our contention that the plaintiff has no power of Eminent Domain in Missouri is because of the bearing which we believe the Federal law applicable to the construction of bridges (already quoted) has upon the powers which plaintiff has a right to exercise in Missouri, now.

III

Defendant in error is estopped from claiming a more extensive area of the western approach to the bridge than that defined by the design and plan approved by the Secretary of War.

The Bridge Company was granted by the Act of Congress the **essential and needful** Federal authority to build this **"bridge and approaches thereto"** over the Mississippi river (to quote section 1 of the Act). It was by the Act required to define its wants by "a design and drawings of the bridge, piers, **approaches** and accessory works", which design and drawings became the *warrant* (and, we say, also the **limitations)** of authority to construct the "bridge, approaches and accessory works".

When the Federal consent or authority was thus obtained, on certain terms, the defendant in error is estopped from asserting a greater scope of authority than it thus obtained.

It took the benefit of the Act and of the plans and drawings thereunder, for the purpose of **constructing** the bridge and approaches; it should justly bear likewise such **burden** as the terms of the grant may import.

Broom Max. 705–712

The burden is merely to remain within the terms of the authority it sought and obtained. There is no injustice in requiring this. To do otherwise would be to allow the defendant in error to get beyond and above the terms of the Federal Act which defined the conditions without the observance of which (to quote the Act again) **"it shall not be lawful to construct,** or commence the construction of any **bridge"**, etc., over any **"navigable river"** in the United States.

30 U. S. Stat. L., p. 1151, sec. 9

The terms of the Act just cited disclose clearly that the object of the legislation was to forbid the erection of such bridge-works (over navigable waters) as are here in question, even **"wholly within the limits of a single State", without previous Federal** sanction, for the section declares:

> "*Provided*, That such structures may be built under authority of the legislature of a State across rivers and other waterways the navigable portions of which **lie wholly within the limits of a single State,** provided the location and plans thereof are submitted to and approved by the Chief of Engineers and by the Secretary of War before con-

struction is commenced: *And provided further*, That when plans for any bridge or other structure have been approved by the Chief of Engineers and by the Secretary of War, **it shall not be lawful to deviate from such plans either before or after completion of the structure** unless the modification of said plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War."

(30 Stat. L., 1151, sec. 9)

The last proviso demonstrates that no **bridge-approach** is lawful, **outside that** sanctioned by the Federal approved maps, because such outside works (as accessory or appurtenant to the bridge) would be necessarily a deviation **"from such plans"**. "It shall not be lawful to deviate from such plans EITHER BEFORE **or after completion** of the structure", unless with *previous* Federal approval.

Our contention is that this Act is a **bar to the enlargement** of the area of the bridge approach, as approved by the map and limited to a distance of 720 feet from the river bank. What notice or weight was accorded to our contention on this subject, in the previous history of the case, your Honors may, perhaps, discover, but you will then be more fortunate than we.

IV

The petition of the Bridge Company (on which the whole case rests) **does not state facts to warrant the taking of the land** in question as a bridge approach, **under the governing Federal Statutes.**

The petition of defendant in error does not state a cause of action for condemnation, because, in the first

place, **it fails to show compliance with the Federal laws** authorizing the construction of said bridge.

The Federal Act, of which all Courts take judicial notice, as the supreme law of the land, prescribes a number of preliminary steps essential to the construction of the bridge. The petition should show compliance with every essential condition, which it fails to do, for instance, with the absolutely vital condition that **the bridge construction be begun within one year.** There is no such allegation, and the proof is exactly to the contrary (Printed Record, p. 23).

In the learned opinion of the majority of the Supreme Court of Missouri, it is said, in treating this point of objection, that **"the presumption will be indulged** that it" (the bridge) **"was completed within the time specified"** (194 Mo. 189).

In this connection it may be appropriate to quote the words of Judge WALLACE of New York in regard to this subject in Pennsylvania Ry. Co. v. Baltimore & N. Y. Ry. Co., 37 Fed. 130:

> "The demurrer thus raises the question of the burden of proof in a case where the navigation of public waters has been obstructed under circumstances that constitute a nuisance, unless those concerned are authorized by competent authority to maintain the obstruction in the manner **and to the extent** in which it exists. I have no hesitation in deciding that those who obstruct the use of a public highway, whether on land or water, must justify the act by producing their authority, and proving that they exercised it **in essential conformity to its terms.** Their act is an encroachment upon the rights common to all, unless they have a peculiar privilege which exempts them from the general rule of obligation. The fact that a bridge over navigable waters has been sanctioned by Congress,

> or by the State within whose limits they are situated, and that it has been built by the person or corporation authorized to build it, does not render it a legal structure, **unless as built it conforms to the terms and limitations of the authority.**"

We invoke the principle of the above ruling to support our contention that no right to condemn is shown by the petition or by the facts outside the petition.

The petition does not state a cause of action because the purposes for which the land is claimed by the petition are, at least in part, beyond the objects for which land may be condemned by a bridge company proceeding under the authority of the Federal Act authorizing this bridge, namely, in part **"for terminal yards"**. Such a purpose is not within the terms of the law permitting the taking of land by a bridge company of the sort in question here but, on the contrary, the Act of Congress authorizes **only such "bridge * * * approaches and accessory works"** as are included in the plats, designs and drawings, approved by the Secretary of War; and no such "trimmings" appear on those documents in this case.

The petition does not state a cause of action, because it alleges that the **bridge is being constructed "within the territorial limits"** set out in the Act of Congress. The Act of Congress sets out no limits, expressly, but defines a method by which the limits were established, namely, **by a map approved finally by the Secretary of War.** Plaintiff alleges **none** of those specific steps, nor the territorial limitations fixed by said map, and hence the petition is deficient on its face.

N. Y. Central case, 5 Hun. 86
Railroad v. Railroad, 37 Fed. 129
Miller v. N. Y., 109 U. S. 385

The petition is also deficient in that it shows upon its face that other purposes besides those for which land may be taken for bridge purposes are contemplated by the taking of the land in question. The petition alleges, among other things, that the property of defendants is necessary for **"terminal yards"**. If defendant in error had the right to appropriate a reasonable amount of land for a bridge approach, it does not thereby acquire the right to appropriate land (under the federal Act act authorizing the bridge) for **"terminal yards"**. The evidence before the Court shows that the so-called "terminal yards" extend at least **two and one-half miles west of the river bank.** Those limits are certainly not essential for a bridge approach. The petition confesses that fact by declaring that the "terminal yards" are as much an object of the appropriation of the land as the bridge approach itself. On this branch of the case we respectfully submit that it affirmatively appears from the petition that the land is sought to be condemned **for a purpose to which the federal law** (which alone furnishes authority for any bridge construction at this place) **gives no sanction.** The fact that other parts of the petition allege purposes which might be more debatable does not improve the status of defendant in error. The one unauthorized purpose vitiates the entire claim to appropriate the land desired. It is a settled rule of this subject that where land is sought to be condemned for two purposes, one of which is authorized and the other not authorized by the law of Eminent Domain, **the whole proceeding must fail.**

Lake Shore, Etc., Co. v. B. & O. Co., 142 Ill. 272

The petition omits any averment that the real property is sought to be taken "*for public use*". That averment **is essential** to support any taking of property, as there would be no **"due process of law"**, if taken for private use. The averment of a proposed and legitimate **public use** is essential and jurisdictional.

Railroad v. Nebraska, 164 U. S. 403
N. Y. Cent. case, 5 Hun 86
Colville v. Judy, 73 Mo. 651
Railroad v. Galt, 133 Ill. 657
Evergreen Assn. v. Beecher, 53 Conn. 551

Conclusion

We believe that the pivotal rule on which the case should turn is that express legislation of Congress, defining terms on which bridges over navigable interstate rivers may be **constructed,** ALTERED or ABOLISHED, if need be, is **exclusive** (strictly so) of any legislative power in the several States to treat that subject.

The precept that laws conferring powers to take private property for public use are to be construed strictly or narrowly, is familiar and well settled.

10 Ency. Law (2d ed.) p. 1100

But we need not invoke an application of that precept because, in the case at bar, there is a total **want of power** to take this land as part of a bridge approach, because **there is no bridge approach** beyond the 720 feet marked as such by the Federal authority, in as much as that authority alone has the power to authorize the construction thereof as part of a bridge over the Mississippi River.

THE PROPER STEPS to start and to preserve for review the Federal questions outlined above were duly taken from the very beginning of the case, conforming to the principles announced in many decisions of this Court.

McCormick v. Bank, 165 U. S. 538
Bank v. Kennedy, 167 U. S. 362
Nutt v. Knut, 200 U. S. 13
Lavagnino v. Uhlig, 198 U. S. 443
Otis Co. v. Ludlow Co., 201 U. S. 141
Vicksburg v. Waterworks Co., 202 U. S. 453

A Federal question is involved, even although the State Court rested its decision on the Constitution and laws of the State.

Kies v. Lowrey, 199 U. S. 233

The first judgment in the Supreme Court of Missouri in this cause (174 Mo. 1) was one of reversal and remand, from which judgment, of course, no writ of error from this Court would lie.

Johnson v. Keith, 117 U. S. 199
Schlosser v. Hemphill, 198 U. S. 173

ON THE SECOND APPEAL (194 Mo. 175) proper foundations for discussing the questions here presented were laid by the assignments of error in the Supreme Court, which appear in full in the Printed Transcript (pp. 183–185).

There is a hint in the learned opinion of the majority of the Supreme Court of Missouri that *some equities* have arisen to strengthen the present position of the Bridge Company, because there has been **"expended a vast amount of money** in the construction of said bridge

and approaches" (194 Mo. 189), and it is said that if the State decisions were overruled, it **"could but result in great injury to plaintiff and other investors,** who acted on the faith" thereof.

There is nothing in this record to show that any impairment of value of any investments made on the faith of the bridge would ensue by limiting the approach to the bounds **defined by the Bridge Company's own map,** approved by the Secretary of War. The only consequences which would follow if the Bridge Company should be restricted to the limits it marked for itself (and the Federal government approved) would be that other modes of taking the property in question for public use as a railway terminal would become necessary.

The case at bar has been pending for several years, since April, 1902, but in the early stages thereof the present plaintiffs in error interposed the chief objections urged to the condemnation of this land, in exceptions (filed in April, 1903) to the report of the commissioners for condemnation, **before the trial of the cause,** in most distinct and unmistakable terms, and again, after the trial, the objections were renewed in the motion for new trial (Printed Record, pp. 178–180).

At every stage of the litigitaion, plaintiffs in error have insisted on an observance by the Bridge Company of **the limitations and conditions** imposed upon it by the Act of Congress which gave it the authority to build this structure.

We respectfully pray this Conrt to inforce the **just and clear terms** of the Federal statute, which is the whole warrant of the power given to the defendant in error, and **to keep defendant in error within its plain terms.**

We humbly ask that the judgment of the Supreme Court of Missouri be reversed and the cause be remanded with appropriate directions.

MADISON R. SMITH,
THOMAS T. FAUNTLEROY and
SHEPARD BARCLAY,
Attorneys and of Counsel for Plaintiffs in Error.

St. Louis, Mo.,
February, 1907.

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JAMES H. McKENNE
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NO. 253

(OCTOBER TERM, 1906)

IN THE

Supreme Court of the United States

R. G. STONE, R. M. FINLEY AND NANNIE E. FINLEY,
Plaintiffs in Error.

vs.

SOUTHERN ILLINOIS AND MISSOURI BRIDGE COMPANY,
Defendant in Error,

In Error to the Supreme Court of the State of Missouri.

REPLY BRIEF FOR PLAINTIFFS IN ERROR

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REPLY BRIEF FOR PLAINTIFFS IN ERROR

It seems appropriate to submit a few words of reply to the learned Brief for Defendant in Error, in view of contentions therein which appear to call for some comment.

I

It is claimed that Plaintiffs in Error waived the right to apply for a writ of error. We reply that there was no such waiver.

In the Missouri Circuit Court, before the trial, defendants (now plaintiffs in error) filed an answer (Printed Record, p. 18–20) in which they assert, in a most positive manner, that the right to condemn the property described in the petition did not extend

> "**beyond the seven hundred and twenty (720) feet,** the length of the approach to said bridge on the Missouri side of said Mississippi River, for the reason that by the terms of said Act of Congress, approved as aforesaid, on January 26, 1901, the approaches to said bridge as to length, height, breadth and general character were placed **under the supervision of, and to be determined by the Secretary of War,** or the Civil Engineers of his department, and that by said Act of Congress, that power was vested **alone** in him".

The defendants' answer contained other distinct averments, invoking immunity under the Act of Congress (authorizing the construction of the bridge) claiming that thereby the limits of the right to condemn the land of defendants for the bridge approach were defined absolutely.

(See excerpts from Amended Answer in our first Brief in this Court, pp. 7–9.)

Before the trial, now the subject of review by this writ of error, defendants (plaintiffs in error) objected in the clearest terms by their answer to any condemnation of their property, **beyond the limits declared by the Act of Congress** and marked on the river bank **by the map and design** approved by the Chief of Engineers and by the Secretary of War.

To the contention made by defendant in error throughout its learned Brief, to the effect that there is no Federal question involved in the case as presented to this Court, we answer that the vital Federal question was distinctly made by the **defendant in error itself** at the very **outset** of the proceedings by the PETITION which it filed (Printed Record, pp. 5–6). In that petition it is said:

> "That said bridge is being constructed **under an Act of Congress** entitled, an Act to authorize the construction of a bridge across the Mississippi River at or near Grays Point, Missouri, approved January 26th, 1901. That the same is being constructed **within the territorial limits and conditions in said Act fully set out.**"

It has been the contention of the plaintiffs in error that **"the territorial limits and conditions in said Act fully set out"** (to quote the very words of the petition of the Bridge Company) **excluded** the land of defendants (now plaintiffs in error) which the Bridge Company by its petition sought to condemn.

It has been steadily the contention of the plaintiffs in error that the right to condemn their land was restricted and limited by the Act of Congress, and that a proper construction of that Act (the only authority for the erection of the bridge and its approaches) forbade the taking of any land for the bridge purposes, **beyond the limit of seven hundred and twenty feet from the river bank,** that limit having been PRESCRIBED **by the map submitted by the Bridge Company itself** to the Federal authorities, and approved finally by the Secretary of War as defining the "bridge, approaches and accessory works" authorized by Congress in the exercise of its supreme power over the navigable waters of the United States.

The construction of that Act of Congress (in the circumstances described) was invoked by plaintiffs in error from a point in the litigation **anterior to the trial of the case**, as appears by the record. And at every stage in the proceedings since then, that contention has been renewed.

It was said more than fifty years ago in this Court that,

> "As the Court of Appeals could not have adjudicated the case without having denied to the defendant a defense which he claimed under a law of the United States, the case is properly here under the 25th section of the Judiciary Act of 1789."
> Teal v. Felton, 12 How. 289

The plaintiffs in error called earnestly for a construction of the Acts of Congress we have cited in this case from the beginning, and they appealed to that construction to protect them from the taking of their land, against their will, under the pretended authority of the Federal law. But their cry and their appeal have been in vain. The idea that, at any stage, they **waived** their claim of immunity under the Federal law is a figment of fancy for which the record in the case furnishes no foundation whatever.

II

It is claimed by defendant in error that plaintiffs in error acquiesced in the judgment below.

We reply that there has been no acquiescence.

It is intimated, in the learned Brief for Defendant in Error (p. 22) that **"doubtless, the money was paid"**, meaning the amount of damages awarded as compensation for the taking of the land!

The hint is that by accepting such payment plaintiffs in error **waived the right to review** the judgment.

It is a matter of regret to us to be obliged to say that **this intimation is** WITHOUT THE SLIGHTEST FOUNDATION.

There is nothing in this record to warrant such a statement. On the contrary, the record discloses that the Cape Girardeau & Thebes Terminal Railroad Company attempted to be made a party defendant in the case, and that its application to that end was denied.

No complaint is made in this Court on that score, by plaintiffs in error, but their 17th assignment of error, in the Motion for New Trial (Printed Record, p. 180) complains of the action of the trial court **"in refusing to make"** the Terminal Railroad **"a party defendant,** as prayed in their Amended Answer", etc.

The Supreme Court of Missouri in its last opinion rules that "no error was committed in refusing it" (the Terminal Railroad) "to become a party defendant" (194 Mo. 186).

There is not a scintilla of showing in this record under review that the Terminal Railroad, or any one else, has **accepted** any payment of damages.

The judgment reviewed is in favor of the defendants (now plaintiffs in error) for the amount of the damages awarded, which are ordered to be **"paid into Court"** (Printed Record, p. 21).

There is **nothing before this Court even to suggest that any one has ever accepted or been paid said fund.**

Hence the contention made by defendant in error, on the groundless "assumption" that plaintiffs in error **waived their right of review** and accepted the damages awarded, is futile **and utterly without merit.**

The whole second point in the learned brief of defendant in error (pp. 13, 22–24) is planted on that erroneous assumption. The contention is not worthy of further notice.

III

The defendant in error contends that "the record does not show that the judgment of the State Court was based on a Federal question".

We reply that not only does that judgment necessarily involve the decision of Federal questions, but those presented here were properly raised in many ways in the Court of first instance, before the trial, as well as at every later stage of the proceedings.

The largest Federal question in the case is that, because of the Acts of Congress, expressed in the **"designs and drawings of the bridge, piers, approaches and accessory works"**, approved by the Secretary of War, the condemnation of the land in question should have been restricted to the area of the bridge approach as indicated by those **"designs and drawings"**, namely, to the limit of 720 feet from the river bank on the Missouri side.

The area of condemnation was enlarged by the State Courts to an extent of **more than two miles** (Printed Record, pp. 32, 35) yet there is no authority of any sort for that extension of the area, since the petition of the Bridge Company invokes the power of eminent domain only **"under an Act of Congress"**, approved January 26, 1901, and **"within the** TERRITORIAL LIMITS **and conditions in said act fully set out"** (petition of Plaintiff, Printed Record, p. 5).

The Federal questions argued at this bar were raised below in several forms:

BEFORE THE TRIAL

1. *By exceptions to the Commissioners' report*, which report described land of defendants, proposed to be taken, **beyond the limits of 720 feet** from the river bank. The exceptions object to that taking as being "VOID", because the Act of Congress of January 26, 1901, and the plans approved by the Secretary of War fixed **"the length of the approach** to said bridge on the Missouri side at 720 feet". (*See 1st exception*, Printed Record, p. 13; and 2nd, 3rd, 6th, 7th, 8th and 10th exceptions, pp. 13–15.)

2. *By the Answer of defendants*, of which answer portions are copied in our first Brief (pp. 7–9) which clearly assert a claim to the protection of the Federal organic and statutory law (Printed Record, pp. 18–20).

AT THE TRIAL

3. *By objections to evidence*, in which objections plaintiffs in error claimed that the petition, "taken in connection with the charter **and the Act of Congress**", disclosed **"that the Court has no power** to deal with the land, subject-matter of the petition, **lying west of the approach proper, as fixed by the Secretary of War,** which is 720 feet".

4. *By requests for instructions* (refused) expressly asking the Court to limit the power to appropriate the land to "a distance of 720 feet for the western approach to its bridge", this being "the length of the approach as fixed by the Secretary of War, it being his duty **by the terms of said Act of Congress** to ascertain and fix the **length of said approach** (see Instruction in full in our first Brief, p. 23, and in Printed Record, p. 174).

AFTER THE TRIAL

5. *By motion for new trial* (Printed Record, pp. 178–180) wherein the 9th, 10th, 11th, 15th and other assignments raised Federal questions now presented for review.

6. *By motion in arrest*, in which the 3d and 4th grounds claim that the order of the Court is void, "except as to 720 feet" of defendant's property, "the length of the approach to said bridge fixed by the Secretary of War" (Printed Record, p. 181).

7. *By assignments of error and briefs*, in the Supreme Court of Missouri before the hearing in that court (Printed Record, pp. 183–185).

8. *By motion for rehearing* (Printed Record, p. 194).

9. *By assignments of error, accompanying petition for writ of error*, from this Court (Printed Record, p. 198).

In all of these many objections to the taking of the land against the will of plaintiffs in error, they protest against the attempt of the Bridge Company to pass beyond the area of the **"bridge, approaches and accessory works"**, whose limits are inflexibly and unalterably defined by the Federal authority and the maps and drawings which it required to point out **specifically** that area.

The precepts governing the development of Federal questions in the State Courts for review by this Court are so familiar to your Honors that it does not seem needful, at this time, to indulge in any elaborate argu-

ment to maintain our contention that this case has been properly brought within the revisory jurisdiction of this Court. We merely cite a few typical cases which we consider sustain our contention on that point, in addition to those mentioned in our first brief (p. 72).

Davis v. Packard, 6 Pet. 41
C. B. & Q. Ry. v. Chicago, 166 U. S. 226
Sully v. Bank, 178 U. S. 289
Kaukauna Water Co. v. Green Bay Canal, 142 U. S. 254
M. K. & T. Ry. Co. v. Elliott, 184 U. S. 530
C. B. & Q. Ry. Co. v. People, 200 U. S. 561
Kaukauna Water Co. v. Paper Co., 172 U. S. 58
Terre Haute & Ind. R. R. Co. v. Indiana, 194 U. S. 579

IV

The Federal law, limiting the area of the bridge approach, is supreme; and the Missouri law can not lawfully "deviate from such plans" **as are approved by the Federal authority** (defining the limits of the "bridge, approaches and accessory works") **without sanction of the Federal authority.**

This we claim to be the effect of the general Act of Congress regulating the construction of bridges over navigable waters, as well as of the special Act relating to this bridge.

The former Act declares that **"it shall not be lawful"** to construct any "BRIDGE" over any navigable river without the consent of Congress, and until approval of the plans by the Chief of Engineers and the Secretary of War; and this is required, even as to **"waterways the navigable portions of which lie wholly within the limits of a single State".**

That Act also contains the following imperative and *supreme commands* as to the effect of the plans thus approved:

> "*And provided further*, That when plans for any bridge or other structure have been approved by the Chief of Engineers and by the Secretary of War, **it shall not be lawful to deviate from such plans either before or after completion of the structure** unless the modification of said plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War." (30 Stat. L., 1151.)

In the special Act of Congress relating to this particular bridge (approved January 26, 1901) the reason why such positive Federal legislation exists is clearly outlined. It is to set and define the clear boundaries of **Federal supervision and regulation** of the **"tolls"** for the passage of passengers, trains, etc., over the structure as authorized by the Federal law and by the plans approved under the Federal law, for the Act declares that those tolls shall be such **"as may be approved from time to time by the Secretary of War"** (Printed Record, p. 85).

31 U. S. Stat. L. 741, sec. 1.

By the second section of this Act it is declared:

> Sec. 2. That the bridge BUILT, operated and maintained **under this Act**, and SUBJECT TO ITS LIMITATIONS, shall be a **lawful structure**, and shall be recognized and known as a post route, upon which also **no higher charge shall be made for the transmission over the same**, of the mails, the troops, and the munitions of war of the United States than the rate per mile paid for the

transportation of the same over the railroads or public highways leading to said bridge, and it shall enjoy the rights and privileges of other post roads in the United States; and **equal privileges** in the use of said bridge shall be granted to all telegraph and telephone companies; **and the United States shall have the right of way across said bridge and its approaches** for postal-telegraph or for telephone purposes.

These provisions are designed to secure to the Federal Government the rights mentioned, **on and over** the "bridge, **approaches and accessory works**", authorized by the Act (see section 7) and defined by the "*design and drawings*" thereof, which are to be approved by the chief of the U. S. Engineers and by the Secretary of War.

The Federal jurisdiction created to regulate **tolls** and **to protect the government in its use of the bridge and approaches** as they are defined by the drawings and plans approved by the Secretary of War do not expand by the efforts of a local State authority.

The reason why both and all the Federal statutes **forbid,** or declare **unlawful,** such bridges and approaches as do not conform to plans approved, as required, is to define, beyond possibility of mistake, the **limits of territory** within which the Federal power granted to regulate tolls shall be effective.

Section 9 of the Act casts a flood of light upon the intention of this legislation, in the particular to which we refer:

> Sec. 9. That all railroad companies desiring the use of any bridge constructed under this Act **shall have, and be entitled to, equal rights and privileges relative to the passage of railroad trains or**

> **cars over the same and over the approaches there,** upon payment of **a reasonable compensation** for such use; and in case the parties interested shall fail to agree upon the sum or sums to be paid and upon the rules and conditions to which each shall conform in using said bridge, all matters at issue between them shall, upon the application of either party, be determined by the Circuit Court of the United States in and for any district **in which any portion of said bridge may be.**

Under this law, the power to determine, in case of dispute, the **"reasonable compensation"** for the use of the structure by "all railroads" is vested in the **Federal Courts.** But this power is limited to the **"bridge, approaches and accessory works"** (sec. 7) as defined by the required plans and drawings, approved by the Secretary of War.

Who shall exercise that power as to that part of the bridge and approaches in this case, **outside the scope of the plan and approved drawings?**

Under the law, what could the Federal Courts do in regard to fixing the compensation for passage over that part of the approach beyond the limits defined therefor by the plans and drawings which received the official approval?

Learned counsel for defendant in error appear to have lost the meaning we intended to convey by our first brief. **Our claim is that the condemnation should have been confined to the territorial limits** marked by the Acts of Congress **authorizing and** DEFINING the **"bridge, approaches and accessory works",** and that while the local law might be utilized, if it had the power, to condemn the land, such condemnation was necessarily restricted to the area which the Federal authority saw fit to approve as the "bridge, approaches

and accessory works". Our claim is that the local law must yield to the Federal law as to the definition ON THE GROUND of what constitutes the bridge and its approaches.

A study of these congressional Acts will unfold the evident purpose of Congress to require the approved plans to be respected and obeyed, as the sole authority to define the actual limits of the "bridge, approaches and accessory works" (sec. 7).

Having, by submitting the plans and drawings as required by section 7, defined the area of the proposed and authorized structure, and also defined thereby **the extent to which the Bridge Company submits itself and its business of interstate commerce** across the bridge, to Federal SUPERVISION as to "tolls" and "reasonable compensation" for transportation, the Bridge Company should be required to keep within the area marked by the Federal law of its being. There is no injustice in this, nor in holding that the Bridge Company is **restrained,** by the same Federal law of its being, from extending its bridge approaches far beyond its own plans and drawings thereof.

Our main claim is that any legislation of Missouri, which may be supposed to permit such performance by the defendant in error, is VOID and of no force **because in conflict with the paramount Federal law** on this subject.

If the Bridge Company wished to enlarge the scope of its proposed structure, it should first have submitted its modified plans to the same authority which approved the originals; but it could not, lawfully, take into its own hands the decision of the propriety of such proposed action. The Federal authority must first sanction any such change of plans.

> "**It shall not be lawful to deviate** from such plans either BEFORE OR AFTER COMPLETION **of the structure,** unless the modification of such plans has **previously** been submitted to and received the approval of the Chief of Engineers and of the Secretary of War."
> (30 Stat. L., p. 1151, sec. 9)

This Act of Congress we claim is the Supreme Law of the Land. No Missouri law can narrow its meaning or dispense with the limitations it imposes.

The approved plans and drawings in the case at bar fix the bridge approach at 720 feet from the river bank, and those plans likewise give to all citizens in the position of the plaintiffs in error immunity against the taking of land beyond those limits, on the facts which here appear.

The preservation of free navigation of the stream, as defendant in error contends, may be *one* of the objects of the Federal legislation on this subject, but it is not the only object. The other purposes of regulation and supervision of the USE of the structure, **as authorized by the Federal law alone,** are quite as important and vital in these latter days. The integrity and force of the Federal legislation on these subjects can not be maintained and preserved except by a firm and steady assertion by this High Court of the principles which we have endeavored to expound in these pages.

We respectfully submit that the judgment below should be reversed, with such directions as may be appropriate in the circumstances.

MADISON R. SMITH,
THOMAS T. FAUNTLEROY, and
SHEPARD BARCLAY,
Attorneys and of Counsel for Plaintiffs in Error.

St. Louis, Mo., March, 1907.

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(20,196)

No. 253

(OCTOBER TERM, 1906.)

IN THE

Supreme Court of the United States

R. G. STONE, R. M. FINLEY and NANNIE E. FINLEY,
Plaintiffs in Error.

vs.

SOUTHERN ILLINOIS AND MISSOURI BRIDGE COMPANY,
Defendant in Error.

Suit to Condemn Land for a Bridge Approach.

In Error to the Supreme Court of the State of Missouri.

Petition of Plaintiffs in Error for Rehearing.

MADISON R. SMITH,
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Attorneys and of Counsel for Plaintiffs in Error.

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PETITION OF PLAINTIFFS IN ERROR FOR REHEARING.

It is sometimes an imperative duty to ask a reconsideration of a judgment in Courts of the highest authority. In the development of jurisprudence the petition for rehearing has become a necessary evil. It is a helpful and friendly motion, when made in the proper spirit; and is always welcome to those patient judges who, like your Honors, are willing to give due time to the settlement of the problems presented by the court records of to-day.

In the case at bar, the circumstances in which Court and counsel were placed when it was reached for argument, did not afford the usual time for its discussion. Plaintiffs in error were necessarily limited to less than an hour, and only by the great courtesy and kindness of the Court was so much time available.

There are some new questions in this record which, we respectfully submit, should receive further attention, despite the evident care and thought already bestowed upon them. With the utmost respect for the Court and for all its members, we beg to offer a few suggestions in support of this

Petition for Rehearing.

The plaintiffs in error have been singularly unfortunate in failing to present some of their most serious contentions in a manner to command the attention of the Court. Some of these contentions involve far-reaching consequences; the learned opinion herein denies them, and we invoke a further consideration of some of them whose merits have deeply impressed us.

A Mistake of Fact.

The learned opinion inadvertantly approves a mistake of fact appearing in the learned brief for defendant in error, wherein that brief avers (p. 36), that

> "The 720 feet, where the approach required by the War Department ends, is some sixty feet from the ground."

For the learned opinion declares:

> "This record shows that the point, 720 feet to the west, where the approach required by the War Department ends, is at a height of some 60 feet from the ground."

The drawing and plan (Transcript, p. 68) sanctioned by the Chief of Engineers and Secretary of War, indicate that the official, approved approach, as a part of the Bridge, *reached the ground,* and does not end at a height of some 60 feet above it. The testimony shows that, while the western end of the approach is some sixty feet above the level of the *river,* that end is likewise in the bluff or hill, within 700 feet of the river, as indicated on the official drawing. A number of witnesses (including the engineer of defendant in error), attest these facts and declare that the hill or bluff on the Missouri side is about 700 feet from the water's edge, and that the western terminus of the approach, (as marked on the government drawing) is in the hill or bluff, so that the contemplated and authorized bridge is a complete structure, and not an imperfect piece of abortive engineering, ending "*in the air,*" as defendant in error appears to intimate, contrary to the undisputed testimony. (Printed Transcript, pp. 24, 27, 28, 30, 42, 48).

LIMITATION OF STATE POWER AND THE REASON THEREOF.

The leading contention of plaintiffs in error is that the State law of Missouri was invoked to condemn their land, solely and only by authority of the Act of Congress and subject to its terms.

THE PETITION

of defendant in error, by express words, limited the process of law thereby invoked to "*the territorial limits and conditions in said act set out.*" (Printed Transcript, p. 5.)

The taking of the land of plaintiffs in error was not

asked under *any other authority* than the Act of Congress itself.

The learned opinion on this point says:

> "We cannot find it within the purpose of Congress, if it had the power so to do, by the terms of this act, to limit the State in its right to authorize these necessary terminals and connecting facilities, because the plans and specifications, which fully subserved the purpose of showing the extent to which navigation would be affected had been specifically approved by the Secretary of War, and are not to be altered without his consent."

But we submit, with the utmost respect, that we have never claimed that the State of Missouri did not have power to subject this land to public use for "*necessary terminals and connecting facilities,*" by proper proceedings under her laws authorizing railroad lines and other terminal facilities to be constructed. (R. S. Mo., 1899. (Chap. 12, secs. 1035. 1051, 1061, 1264-1273.)

Our contention was, and is, that the Missouri law cannot subject land to condemnation *as a bridge* beyond the limits defined by Act of Congress, when the latter had *forbidden* such action by declaring that the "bridge, approaches and accessory works" shall "be a *lawful structure, only* when built in accordance with the plans as recommended by the said board of engineers, and approved by the Chief of Engineers," and the Secretary of War (31 U. S. St. L. 741, ch. 181, sec. 7. and 30 U. S. St. L. 1151).

Our respectful insistence is that the purpose of this legislation of Congress is to inhibit absolutely action by any State authority in the matter of erecting bridges

across navigable waters, except in subordination to the plans sanctioned by the federal authority. And that those plans, and the federal limitations as to *"lawful structures"* of that class, constitute an immunity to plaintiffs in error against the taking of their land for the purposes of such a bridge, over navigable waters, in a case like this, where the *pleading* which lies at the root of the case asks that the land be taken

> "Under an act of Congress entitled an act to authorize the Construction of a bridge across the Mississippi River at or near Gray's Point, Missouri, approved January 26th 1901; That the same is being constructed *within the territorial limits and conditions in said act fully set out.*"

Doubtless, by appropriate steps, the land sought to be taken in this case, outside the boundaries marked by the Company's *own* drawings and plans (approved by the Secretary of War) could be subject to public use for terminal railway purposes under Missouri laws. We have never denied that proposition. We have no complaint to make this ruling in the learned opinion:

> "If the State was deprived of its power to authorize extensions and connections which should make this bridge available for the common use of railroads for which it was intended, it would have been a vain thing to provide for a bridge abruptly terminating at a height and point where, without further approaches and connecting facilities, its usefulness would have been destroyed."

We certainly had no idea of asserting the opposite of that declaration. Terminal railroads to connect with the bridge as outlined, *inexorably,* by the federal

plans, could be authorized and constructed under State law, but *not as part of a bridge* defined by plans under federal sanction and only "lawful" by force of the federal authority, as the petition of defendant in error at the outset of the case conceded by most definite language.

We believe that there is deeper force than has been given our claim that the intent of the federal legislation forbidding (as unlawful) such structures except as authorized by the federal plans (approved by the revising officers) would be frustrated if proceedings, such as here appear, receive the final sanction of this High Court.

The subject involved is well worthy a second hearing, lest some inadvertant error might occur which would return in later days to vex your Honors in other applications of the decisive principle controlling the case at bar. We contend that the express federal warrant to erect the bridge and approaches in the exact mould prescribed by the method marked out by these national acts (which alone are alleged as the source and limit of authority by the petition beginning the suit), constitute likewise an *exclusion* of authority in any State to authorize the taking of land otherwise, as part of the "*bridge, approaches* and *accessory works.*" (Sec. 7.) The expression of the power and of its limitations is the exclusion of other powers unexpressed; and especially in view of the imperative mandates of emphasis in the Acts themselves:

> 'The proposed bridge shall be a lawful structure only when built in accordance with the plans," etc. (sec. 7.)
>
> * * *
>
> "It shall not be lawful to deviate from such plans either *before or after completion* of the

structure, unless the modification of such plans has *previously* been submitted to and received the approval of the Chief of Engineers and of the Secretary of War."

(30 St. L., p. 1151, sec. 9.)

These acts of Congress will be frustrated if State laws of condemnation may be used, nevertheless, to take land for a bridge approach, under the sole authority of those acts and *"within the territorial limits and conditions in said act fully set out,"* but beyond the territorial limits of the federal plans, which alone define the boundaries of the *"lawful structure."* Does this mean less than that any other structure is an *unlawful structure,* and hence is forbidden as part of the authorized "bridge, approaches and accessory works?"

The necessary parts of such a bridge, its approaches, tracks, etc., are treated as a unit—each and all are lawful when made so by federal sanction.

Railway v. Railway, 163 U. S. 588.

But the corollary is equally potent—those parts which are sought to be constructed as lawful must be within the scope of the federal sanction given to the entire structure. Whatever is beyond the limits defined by the approved plans cannot be made a part of the "bridge, approaches, and accessory works" by the act of any one State alone.

Purposes of Federal Exclusiveness.

With all due respect we suggest that the learned opinion inadvertently omits to give due weight to one of our most vital contentions, as witness the following comment on the purpose of the federal legislation concerning bridges:

> "It is evident that the purpose of requiring the submission of plans, and their approval by the Secretary of War, was to preserve, as far as may be. *the unobstructed passage of the river in the uses of navigation.* To the extent that it was necessary to protect such interests, the law provides that the structure shall be unalterable, and that its approaches shall be approved by the Secretary and remain unchanged without his sanction."

We suggest, most respectfully, that other great purposes, beyond the preservation of free navigation, are outlined by the federal legislation on the subject of bridges; and that those great purposes are well worthy of further consideration.

The acts themselves disclose those purposes to be to protect the government and the public, and competing railroads against the possibility of extortion in tolls and charges for the use of the "bridge, approaches and accessory works" as defined by the plans. The power to fix "reasonable compensation" for the use of the tracks by other railroads etc., and to regulate the "reasonable tolls" for the passage of vehicles, animals and passengers is vested in the courts, and in the Secretary of War (Secs. 1, 2, 9; See our 1st Brief, pp. 12, 13, 16). These provisions are for the protection of the rights of others interested, beyond the bridge owners. The area within which these powers to regulate tolls and charges must be operative is that defined by the plans which trace the lines of official boundaries of the bridge. Here is a corporation of Illinois, building a bridge in Missouri, under the sole sanction of federal statutes, which require the area of the "bridge, approaches and accessory works," to be drawn by the owner, and approved by the govern-

ment. When those lines have been drawn, are they not the limit of federal control and supervision and regulation of the tolls and charges for various uses of the bridge by others than its owner?

Here is a definite purpose indicated by this legislation of greater import in these days than is the protection of navigation of the river. The circle traced by Cardinal Richelieu in the name of Rome was not more significant than is the limit marked by these federal laws to define the scope of the bridge and the field of federal regulation of the bridge charges and tolls. To allow any State to take land for the federal bridge, and while binding it thereto leave the final structure exempt from federal control in the matter of charges and tolls within the territory *beyond the lines defined by the plans*, approved by the federal authority, would present an anomaly which, we submit with the greatest respect, was not intended by the federal acts under review. The idea of a bridge, as contemplated by the existing law, is that of an area defined by the federal authority alone, and subject, within the lines of definition, to control for just purposes by federal authority. Such a bridge was not intended to be Siamese twins, part State and part federal. It was not intended to owe a divided duty to state and federal governments, part to one and part to the other master. Only when built to conform to the plans of federal sanction is it a "lawful structure." A bridge to-day is a great artery of interstate commerce—a bond to unite the business of many states. The law of the United States deems worthy of attention the regulation of bridge charges in the interest of the public. To give effect to that purpose the bridge as marked by the federal

plans is the limit of the lawful structure. Anything else is unlawful.

If we might be permitted to paraphrase the great masterpiece of *Sir William Jones,* to impart our idea of a bridge as contemplated by federal law, we would say:

WHAT CONSTITUTES A BRIDGE?

What constitutes a Bridge?
Not merely trusses. girders, labored mound,
Approach by well-formed ridge;
Not masonry and beams with trestle crowned;
Nor tracks and piers alone
Where, laughing at the States, proud railroads run
In fancied immune zone,
Where none may check their power 'neath the sun.
No! Area of law and right,
With vital powers of equity endued,
Where all a Nation's Might
May curb Monopoly and her fierce brood;
A sweet domain of peace,
Where "reasonable tolls" maintain their sway,
And all extortions cease,
While national justice brightens every day;
These constitute a Bridge!

The spirit of the law is the life of the law. To us it has seemed clear that the spirit of the federal legislation under review is alive with suggestions of a settled purpose to *forbid* an enlargement of territorial limits of the "*bridges, approaches and accessory works,*" (as ascertained by the approved plans), by means of any action or measure, judicial, legislative or executive, of any State or person, except the National government, and that the effort to accomplish such a

result in this case, and to extend the bridge and its approach *without previous federal authority,* had no other effect than to make the *extension* an "unlawful structure," according to the very terms of the federal statute.

A Large Question.

Are we right in saying that the questions in this case are of deep import? They are far-reaching, and should receive, we respectfully insist, such full discussion as will satisfy your Honors that no phase thereof has been overlooked. For our part, we believe that a rehearing would be of advantage, and permit us to submit further authorities and arguments tending to sustain our contentions. The present term of Court was so near its close when the learned opinion was filed and we obtained a copy thereof, that adequate time has not intervened for preparing a Brief in support of this petition. We therefore pray the indulgence of the Court to accord to us a *reasonable time after adjournment* to file such a brief. and to that end we have filed a motion for

Special Leave.

Of that motion we respectfully ask your Honor's consideration and such action as may appear to be just in the circumstances.

No hardship could possibly result from the fullest consideration of this cause which your Honors may deem appropriate thereto.

For convenience of reference we reproduce our said motion for reasonable time to submit our brief herein.

(Caption, title of cause, omitted.)

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING.

Now come plaintiffs in error by their attorneys and move this Honorable Court to grant them leave to file a petition for a rehearing within a reasonable time (say, sixty days), after the adjournment of the Court for the October Term, 1906, because a copy of the learned opinion of the Court was not received by counsel for plaintiffs in error until May 20, 1907, and said opinion was filed only a short while previously.

No adequate time to prepare such a petition has intervened.

Counsel for plaintiffs in error pray the indulgence of the court to accord them a reasonable opportunity to present their petition and *brief in support theerof, after the adjournment,* assuring the Court that, in their opinion, substantial grounds can be shown for granting such a petition.

SHEPARD BARCLAY,
Of Counsel for Plaintiffs in Error.

St. Louis, Mo., May 23, 1907.

The undersigned of Counsel for plaintiffs in error hereby certify that the foregoing motion is not interposed for delay, but because, in his opinion, there are substantial grounds, well founded in point of law, for a petition for a rehearing of said cause.

SHEPARD BARCLAY,
Of Counsel for Plaintiffs in Error.

CONCLUSION.

We earnestly and most respectfully pray that a rehearing be accorded to the plaintiffs in error to permit a fuller discussion and examination of the questions arising on this record. We appreciate the faithful labor your Honors have already given to the case. We trespass further on your courtesy only from strong conviction of the merits of our contentions, and from a desire to be as helpful to your Honors as our ability will permit.

As counsel we further certify that this petition is not interposed for delay, but because, in our opinion, it is well founded in point of law, and because we believe that a rehearing would subserve the ends of justice.

MADISON R. SMITH,
THOS. T. FAUNTLEROY,
SHEPARD BARCLAY,
Attorneys and of Counsel for Plaintiffs in Error.

FILE COPY.

Office Supreme Court, U. S.
FILED.
MAR 13 1907
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1906.

NO. 253.

R. G. STONE, R. M. FINLEY AND NANNIE E. FINLEY,
Plaintiffs in Error.

vs.

SOUTHERN ILLINOIS AND MISSOURI BRIDGE COMPANY,
Defendant in Error.

In Error to the Supreme Court of the State of Missouri.

BRIEF FOR DEFENDANT IN ERROR.

MARTIN L. CLARDY,
Attorney for Defendant in Error.

ALEXANDER G. COCHRAN,
Of Counsel.

St. Louis Law Printing Co., 311-315 Locust. Bell, Main 1819; Kinloch, Central 986 L.

(20,196)

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Defendant in Error,

In Error to the Supreme Court of the State of Missouri.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT FOR DEFENDANT IN ERROR.

This writ of error submits for review a judgment of the Supreme Court of Missouri in a condemnation suit brought by the Southern Illinois & Missouri Bridge Company, a corporation organized under the laws of

Illinois, defendant in error, against R. G. Stone and others, plaintiffs in error, in the Circuit Court of Scott County, Missouri, April 24th, 1902.

The petition for the appointment of commissioners to assess the value of the land sought to be taken, filed by the Bridge Company, contains, among others, the following allegations:

> "That the said bridge is intended as a railroad bridge, and that it is necessary for the plaintiff (Southern Illinois & Missouri Bridge Company) to have a right-of-way for its railway tracks, bridges and terminal yards; that for the purpose of carrying out its charter privileges, it is necessary for it to hold and to own the following described tract of land, lying and being in the County of Scott in the State of Missouri, to-wit": (here follows description) "containing twenty and three-tenths (20.3) acres; that said real estate is necessary for the laying of tracks and the handling of business over and across plaintiff's bridge" (Transcript of Record, pp. 5 and 6).

The petition concludes with a prayer for the appointment of three freeholders as commissioners to assess the damages which defendants may sustain in consequence of the establishment, erection and maintenance of said road and approaches over and through the premises, and for all proper orders.

Section 1352, Revised Statutes of Missouri, 1899, provides that

> "in case it may become necessary for any bridge corporation heretofore organized, or that may be hereafter organized, under Section 1351, to take or appropriate any lands of persons or corporations for approaches, road, foot or wagonways of such

bridge corporation, and the owners of said property can not agree with said corporation upon proper compensation to be paid * * * , then the said property may be taken by said bridge corporation in the same manner that is provided for by law in relation to the appropriation and valuation of lands taken for telegraph * * * and railroad purposes."

The provision for condemning land for the latter purposes is

Section 1264, Revised Statutes of Missouri, 1899, which is as follows:

"In case lands or other property are sought to be appropriated by any road, railroad, telephone, telegraph or other corporation created under the laws of this State for public use, and such corporation and the owners can not agree upon the proper compensation to be paid * * * such corporation may apply to the Circuit Court of the county where said land, or any part thereof, lies, or the Judge thereof in vacation, by petition, setting forth the general directions in which it is desired to construct their road, railroad, telephone or telegraph line over such lands, a description of the real estate or other property which the company seeks to acquire, the names of the owners thereof * * * ."

The section further provides that it shall not be necessary to make any person party defendant unless he is in actual possession of the premises, claiming title,

"or has a title to the premises appearing of record upon the proper records of the county",

and that the petition shall also pray

"the appointment of three disinterested freeholders as commissioners, or by a jury, to assess

> the damages which such owners may severally sustain in consequence of the establishment, erection and maintenance of such road, railroad, telephone or telegraph line over said land * * * ."

Section 1265, Revised Statutes of Missouri, 1899, provides that

> "upon the filing of the petition, a summons shall be issued, giving such owner at least ten days' notice of the time when said petition will be heard * * * ."

Section 1266, Revised Statutes of Missouri, 1899, provides:

> "The Court, or Judge thereof in vacation, on being satisfied that due notice of the pendency of the petition has been given, shall appoint three disinterested commissioners, who shall be freeholders, resident of the county in which the real estate, or a part thereof is situated, to assess the damages which the owners may severally sustain by reason of such appropriation, who, after having viewed the property, shall forthwith return, under oath, such assessment of damages to the clerk of such Court * * * together with a specific description of the property on which such damages are assessed * * * and, thereupon, such company shall pay to said clerk the amount thus assessed for the party in whose favor such damages have been assessed, and, on making such payment, it shall be lawful for such company to hold the interest in the property so appropriated for the uses aforesaid * * * ."

Section 1268, Revised Statutes of Missouri, 1899, provides:

"Upon the filing of such report of said commissioners the clerk of the Court wherein the same is filed, shall duly notify the party whose property is affected by the filing thereof, and the report of said commissioners may be reviewed by the Court in which the proceedings are had, on written exceptions filed by either party in the clerk's office within ten days after the service of the notice aforesaid, and the Court shall make such order therein as right and justice may require, and may order a new appraisement upon good cause shown. Such new appraisement shall, at the request of either party, be made by a jury, under the supervision of the Court, as in ordinary cases of inquiry of damages; but, notwithstanding such exceptions, such company may proceed to erect said telephone or telegraph line or construct said road or railroad, and any subsequent proceedings shall only affect the amount of compensation to be allowed."

On the 12th day of May, 1902, the defendants in said suit filed their answer in the Circuit Court of Dunklin County, to which the cause had been removed by change of venue (Transcript of Record, p. 8), said answer containing first, an averment that no summons or notice had ever been issued and served upon the defendants in the manner required by law.

The second, third and fourth averments are as follows:

"**Second.** It appears from the face of plaintiff's pretended petition, that the plaintiff is a corporation incorporated under the laws of the State of Illinois for the purpose of constructing and maintaining and operating a bridge across the Mississippi River, and these defendants say such a corporation, incorporated under the laws of another

State, for such a purpose, has no right, power or authority, under the Constitution and laws of Missouri, to condemn property of any kind, situated in the State of Missouri, for any use, public or private.

"**Third.** It does not appear by said pretended petition that plaintiff has received any authority from the Congress of the United States or erect a bridge across the Mississippi River.

"**Fourth.** It does not appear by said pretended petition that plaintiff has any right or authority to do business in the State of Missouri, there being no allegations anywhere in said pretended petition showing compliance by it with Sections 1014, 1015, 1016, 1017, 1024, 1025, 1026 and 1027, Article I, Chapter 12 of the Revised Statutes of Missouri, 1899."

The fifth averment states that it does not appear by said "pretended petition" that the plaintiff has surveyed or located the ground over which it "pretends" to have the right to build railway tracks, etc., or that it has filed any profile map of its survey.

The sixth averment is as follows:

"**Sixth.** The plaintiff has no right, power or authority, under the law, to condemn a strip of land 200 feet wide, for a right-of-way for railroad purposes, or for any other purpose."

The seventh states that the defendants, prior to the time of the issuing of the notice or summons, had sold and conveyed the land described to certain persons named, to-wit, J. H. Crowder, L. B. Houck and Giboney Houck, and that the deed had been duly filed for record prior to the institution of plaintiff's suit, and, further, that, prior to the execution of the deed,

"they had entered into a contract with the said grantees in said deed for the sale and conveyance of said real estate to grantees, and that said deed was executed and delivered in pursuance of such contract for the sale of said land",

and that plaintiff had notice long before the beginning of this suit of the existence of the contract, and of the fact that the defendants had sold the property. Defendants then disclaim the ownership of the real estate in suit.

In the eighth averment the defendants state that, prior to the issuing of the summons, the

"Cape Girardeau & Thebes Bridge Terminal Railroad Company, a corporation organized under the laws of the State of Missouri, for the purpose of constructing and maintaining a railroad in Scott County, Missouri, from Fremsdorf Station, on Houck's Missouri & Arkansas Railroad, to the Mississippi River, had bought and acquired, and appropriated to the public use, and for the purpose for which it was incorporated, the property described in the said pretended petition".

The ninth averment is as follows:

"**Ninth.** Defendants further state that the plaintiff, which is a corporation under the laws of Illinois, has no right to construct and operate a railroad, nor to engage in the railroad business, in the State of Missouri, because such business is not expressly authorized in its charter or by any law of this State under which said corporation may come; and this proceeding by it to condemn property for the building of a railroad and its engaging in the railroad business in this State violates the plain provisions

of Section 1024 of the Revised Statutes of Missouri, 1899, and Section 7 of Article XII of the Constitution of Missouri."

The tenth repeats the averments in regard to the sale of the property to the Cape Girardeau & Thebes Bridge Terminal Railroad Company.

The eleventh contains an averment that a suit has been instituted in the Circuit Court of Scott County by the Cape Girardeau & Thebes Bridge Terminal Railroad Company against the Southern Illinois and Missouri Bridge Company, to enjoin the latter company from intering with said property, etc.

On the 14th of May, 1902, the cause coming on for hearing on the petition of plaintiff for the appointment of commissioners, and the answer filed by defendants, the plaintiff Bridge Company, which was incorporated under the laws of Illinois on the 6th of December, 1900, introduced an Act of Congress, dated January 26th, 1901, authorizing the said Bridge Company to construct a bridge across the Mississippi River at or near Gray's Point (T. of R., p. 84); also petition of Myron J. Carpenter and others to James A. Rose, Secretary of State of Illinois, for leave to form a corporation under an Act of the General Assembly of Illinois, entitled "An Act Concerning Corporations, approved April 18, 1872",

> "to erect, construct, maintain and operate a bridge and approaches thereto over the Mississippi River from a point on the east bank of the Mississippi River in the County of Alexander and State of Illinois to a point opposite thereto in the State of Missouri * * * " (Tr. of R., p. 89);

also certificate dated March 29th, 1902, of Sam B. Cook, Secretary of State of Missouri, which, among other things, recites

> "I * * * do hereby certify that said Southern Illinois & Missouri Bridge Company is, from the date hereof, duly authorized and licensed to do business in the State of Missouri for a term ending December 28th, 1950, and is entitled to all the rights and privileges granted to foreign corporations * * *" (T. of R., p. 93).

Evidence was offered by the plaintiff in that Court showing the necessity for condemning the land described for its use, its inability to agree with the owners as to the amount of compensation to be paid, and the value of the land sought to be taken, and that defendants were the record owners of said land at the time of the institution of the suit (T. of R., pp. 93–104).

The defendants in that Court offered evidence of the value of the land and other evidence for the purpose of showing that another railroad corporation, organized April 24th, 1902, and named "Cape Girardeau & Thebes Bridge Terminal Railroad Company" was the owner of the land (T. of R., p. 104 *et seq.*).

On the 14th of May, 1902, the Court rendered its judgment in said cause, in which it is recited:

> "The Court further finds that, at the date of the filing of the petition in this suit, the defendants were the record owners of the property in question, and the Court further finds that the plaintiff has no right to exercise the power of eminent domain and can not acquire the land described in its petition by proceeding to condemn the same" (T. of R., p. 11).

From this judgment plaintiff Bridge Company prosecuted its appeal to the Supreme Court of the State, and, on the hearing of such appeal, the judgment of Dunklin County Circuit Court was in all things reversed, the Court holding, first, that property taken for toll bridges and ferries is for a public use; that plaintiff, a foreign Bridge Company, has all the powers of a domestic corporation and may exercise the right of eminent domain, by virtue of

Section 1024, Revised Statutes of Missouri, 1899, which provides that corporations of other States

> "shall be subjected to all the liabilities and restrictions and duties which are, or may be, imposed upon corporations of like character organized under the general laws of this State, and shall have no other or greater powers",

upon their filing in the office of the Secretary of State their charter or articles of incorporation and paying certain fees.

The cause was remanded, with directions to said Circuit Court to appoint three disinterested commissioners to assess the damages which the defendants would sustain by the appropriation of said strip of land.

The opinion of the Supreme Court on that appeal is found in

Volume 174, Missouri Reports, page 1.

It appears from the opinion that all the questions then before the Court were considered and passed upon by it adversely to defendants' contention.

The cause was remanded, as we have seen, for the sole purpose of enabling the court below to ascertain, according to the forms of law, the amount of compensation which should be paid by the Bridge Company for the tract of land it was seeking to condemn.

Upon the reception of the mandate, the Judge of the Circuit Court, in obedience to its direction, appointed three commissioners to view the land and assess the damages the owners would sustain by the taking of it.

The commissioners, in due time, made their report, assessing the damages at $8,120.00, which amount the plaintiff Bridge Company at once deposited with the clerk of the Court for the use of the defendants in that Court.

To this report, exceptions were filed by the defendants, which exceptions can be found in the

Transcript of Record, pp. 12, 13, 14, 15 and 16.

We quote exceptions 1 and 8, which we believe to be representative of the other exceptions:

> "**First.** And in explanation of this exception, defendants state that plaintiff, by virtue of an Act of Congress, approved January 26th, 1900, was only authorized to build a bridge over the Mississippi River, including approaches at either end thereof, extending across the river from bluff to bluff, and for the information of the Court defendants state that the plans and specifications prepared by the engineers of plaintiff were only approved by the Secretary of War to the extent of confining said approaches within the river bluffs on either side of the river, thereby fixing the length of the approach to said bridge on the Missouri side of said river at seven hundred and twenty (720) feet; and, therefore, defendants except to the order appointing commissioners to view and assess the damage done to their property, except the strip of seven hundred and twenty (720) feet, by two hundred (200) feet wide, extending from the water's edge to the bluff on the west side of the river, which said strip constitutes the western approach to said bridge;

and they charge that that part of said order that seeks to condemn a strip two hundred feet wide from the bluff west over defendants' land is void, for the reason that neither the Act of Congress nor the charter of plaintiff authorizes it to condemn property for any purpose, except for the purpose of an approach to its bridge."

"**Eighth.** Defendants further state by way of objection and exception that plaintiff is a corporation incorporated under the laws of the State of Illinois for the purpose of constructing, maintaining and operating a bridge and approaches thereto over the Mississippi River from a point on the east bank of said river, in the County of Alexander, in the State of Illinois, to a point opposite thereto in the State of Missouri, for the passage of railway trains, and at the option of said corporation for the passage of wagons and vehicles of all kinds, for the transit of animals and foot passengers for such reasonable tolls as may be approved from time to time by the Secretary of War, and defendants further say that such corporation, incorporated under the laws of a foreign State for such purpose aforesaid, although permitted by an act of Congress to erect and maintain such bridge and approaches, yet has no right or power under the Constitution and laws of the State of Missouri, and under the Constitution of the United States or any act of Congress, to condemn any property situated in the State of Missouri to be used by said corporation in constructing, maintaining and operating such bridge and approaches, and that plaintiff had no power by virtue of its charter or the laws of the State of Illinois to condemn property for any purpose, and therefore defendants object and except to the order appointing commissioners and authorizing them to assess damages for the said two-hundred-foot strip to be used for railroad purposes."

These exceptions contain the first reference made in the case to what, by courtesy, may be called a "Federal question".

Defendants also filed an amended answer, which elaborates somewhat the grounds of exception (T. of R., p. 18).

The cause was tried in the Circuit Court, June 30th, 1903, and a verdict rendered for $10,000.00 in favor of said R. G. Stone and others, defendants in that Court, for the damages sustained by them, upon which the Court entered a judgment, reciting that

> "it further appearing to the Court that plaintiff has heretofore paid into Court the sum of $8,120.00 on account of said damages; now, therefore, upon payment by the plaintiff of a further sum of $1,880.00 into Court for the use and benefit of defendants, it is ordered that the easement for the use and purposes of plaintiff, its successors or assigns, for bridge approach, roadways, terminal yards and necessary appurtenances be vested in plaintiff and divested of defendants and their assigns in the real estate hereinbefore in the jury's verdict, which is made a part of this judgment and decree, fully described".

Plaintiff Bridge Company then deposited the further sum of $1,880.00 with the clerk of said Court, thus satisfying said judgment for $10,000.00.

The defendants in that Court then, by proper motion filed, asked an order of Court that the sum of money so deposited with the clerk be paid to the Cape Girardeau & Thebes Bridge Terminal Company, which motion was sustained, and, it is not unfair to assume that the order of the Court was complied with.

From the judgment of the Court, defendants therein appealed to the Supreme Court of Missouri, where the cause was determined in favor of the plaintiff at the October Term, 1905, of that Court.

All the errors which, it was claimed, occurred after the reversal of the cause, were distinctly referred to and carefully considered, except the one upon which plaintiffs in error now place their principal, if not their sole, reliance; that is to say, that the right to condemn the land as an approach to the bridge is limited by the plans, design and drawings of the Bridge Company, approved by the Secretary of War, or that, by reason of the provisions of the Special Act of Congress of January 26th, 1901, authorizing the construction of the bridge, or of the statute of March 3rd, 1899, being section 9 of the River and Harbor Bill of that year, the suit can not be maintained.

The assignments of error are very numerous, but, with due respect to learned counsel, we beg to say they are not as lucid as they might be. We construe them and the brief in their support as asserting—

I.

That the General Statutes of Missouri do not authorize the incorporation of a bridge company to erect a bridge across the Mississippi River—that no company can be organized in this State under said statutes for the erection of bridges over streams which form boundaries between the State of Missouri and another State—that such company can only be organized by special legislation under Section 53, Article IV of the Constitution of Missouri, 1875.

II.

That the law of Missouri does not confer the right of eminent domain on a corporation of another State.

III.

That the law of Illinois does not confer the right of eminent domain upon bridge companies organized in that State, and that the Southern Illinois & Missouri Bridge Company can only exercise in Missouri such powers as are conferred upon it by the State of its creation.

IV.

That the right to commence the erection of the bridge structure was limited to one year from the date of the approval of the Act of Congress of January 26th, 1901, and the Supreme Court of Missouri denied the plaintiffs in error rights accorded to them by said Act of Congress in affirming the judgment of the Circuit Court when the evidence showed that the bridge was not commenced within the period prescribed.

V.

That if the law of Missouri can be interpreted to authorize such bridges, it is unconstitutional, because in conflict with the Federal Constitution and laws which forbid any State from constructing or authorizing the construction of bridges prior to congressional sanction; that such legislation would be violative of

Section 9, Chapter 425, United States Statutes at Large, Vol. 30, p. 1151,

which section is as follows:

"That it shall not be lawful to contruct or commence the construction of any bridge, dam, dike or causeway over or in any port, roadstead, haven, harbor, canal, navigable river, or other navigable water of the United States until the consent of Congress to the building of such structures shall have been obtained and until the plans for the same shall have been submitted to and approved by the Chief of Engineers and by the Secretary of War: *Provided*, That such structures may be built under authority of the legislature of a State across rivers and other waterways the navigable portions of which lie wholly within the limits of a single State, provided the location and plans thereof are submitted to and approved by the Chief of Engineers and by the Secretary of War before construction is commenced: *And provided further*, That when plans for any bridge or other structure have been approved by the Chief of Engineers and by the Secretary of War, it shall not be lawful to deviate from such plans either before or after the completion of the structure unless the modification of said plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War."

VI.

That the Supreme Court of Missouri erred in holding that any land may be condemned for approaches or terminals by the Bridge Company beyond 720 feet, that being the length of the western approach of the bridge as fixed by the Secretary of War.

We dissent from the several positions assumed by the learned counsel for plaintiffs in error for reasons stated in our

BRIEF OF ARGUMENT.

I.

Plaintiffs in error waived the right to apply for a writ of error.

We beg, first, to advert to the fact that there was no suggestion of a Federal question in this case, no invoking of the Federal Constitution or Acts of Congress, until after a final judgment by the Supreme Court of Missouri, holding that, under the laws of the State, the right to condemn by the Bridge Company existed, and not until after the remandment of the cause with directions which excluded from the consideration of the court below all questions except that relating to the "just compensation" to be paid by the plaintiff to the defendants in that case for the value of the land taken and the damage to the remainder of the tract.

> Southern Illinois & Mo. Bridge Co. v. Stone *et al.*, 174 Mo. 1.

Under the law of the State, the right to condemn is to be determined by the Court before the appointment of commissioners whenever that right is challenged. It is essentially a distinct proceeding and, on the second appeal in this case, the Court, in effect, so held, saying in its opinion:

> "It is claimed by defendants that the petition is fatally defective in that it fails to allege that the land sought to be condemned is to be acquired for public use. But the sufficiency of the petition and all other questions presented by the record on this

appeal, up to the time of the decision of the Court on the former appeal, were passed upon in the opinion then delivered, and have become *res adjudicata*. On the former appeal, the judgment was reversed and the cause remanded with specific directions, as before stated, and under such circumstances the mandate must be strictly pursued, all matters included therein being *res adjudicata* and can not be reopened."

Transcript of Record, p. 190; 194 Mo. 179.

In a like proceeding in a Court of West Virginia, there was a judgment for the condemnation of property on the ground that it was necessary for the petitioner, a bridge company, to take it for the purpose of prosecuting its proposed work, and was not necessary to the defendant, another bridge company, for the exercise of its franchise. A writ of error was allowed, the proceedings of the commissioners stayed and the case taken to the Supreme Court of the State, where the judgment of the lower court was affirmed. To review the latter judgment, the case was brought to this Court, where a motion was made to dismiss the writ of error. This Court said:

"The essential points of contention in the case related to the necessity of the property for the purpose of the petitioner, and to its necessity to the defendant for the proper exercise of its franchise. The judgment for the condemnation was conclusive upon both particulars. A right to condemn, as held by the Supreme Court of the State, is to be determined before the appointment of commissioners to estimate the amount of compensation to be paid.

Baltimore & Ohio Railroad v. Pittsburg, Wheeling, Etc., R. R., 17 West Va. 812.

> If the judgment had been different, all further proceedings would have been ended. Being for the condemnation, the estimate of the compensation, which was to follow, was to be made by commissioners to be appointed, and might, therefore, be treated as being a distinct proceeding. The judgment appears to have been considered by that Court as so far final as to justify an appeal from it, and if the Supreme Court of the State holds the judgment of an inferior Court of the State to be final, we can hardly consider it in any other light in exercising our appellate jurisdiction."
>
> Belmont Bridge v. Wheeling Bridge, 138 U. S., *l. c.* 290.

It is clear from the following paragraph in the opinion of the Supreme Court of Missouri on the last appeal, that that Court was of opinion that a writ of error could have been granted on the judgment entered on the first appeal; the Court said:

> "The plaintiff contends now that if there ever was a Federal question involved in this case, it was involved as much in the former appeal as it is now, and the defendants having failed to take any steps to have these questions reviewed by a Federal tribunal can not now do so, because all of the matters and things therein contained are *res adjudicata*, and under no circumstances can be reopened in the same case. Plaintiff further contends that the only questions open to review on this appeal are those raised on the trial in the Circuit Court on the question of damages, as all the other questions involved were adjudicated on the former appeal" (Transcript of Record, p. 188).

A final judgment in the meaning of
Section 709, United States Compiled Statutes, 1901,

is said to be one which leaves nothing to be judicially determined. Every judicial question in this case which was before the Court was decided on the first appeal.

The ascertainment of the "just compensation" is one committed by the law of the State to three commissioners, and then, to assure to the party who may deem himself aggrieved by the award, "due process of law", to a jury. There seems to be no reason why the remitting of the question of compensation to the inferior court should operate to make the judgment interlocutory so as to prevent the granting of a writ of error by this Court, for, in no circumstances, would this Court review the judgment in that respect.

In construing

Article VII of the Constitution,

which provides that

> "in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of common law",

it has been held that

> "the last clause of the amendment is not restricted in its application to suits at common law tried before juries in the courts of the United States, but that it applies to cases brought to this Court by writs of error from the highest courts of the State".
>
> C. B. & Q. R. R. Co. v. Chicago, 166 U. S. 242.

The only modes known to the common law to re-examine such facts, are the granting of a new trial by the Court where the issue was tried, or to which the record was properly returnable, or the award of the venire *facias de novo* by the appellate court for some error of law which intervened in the proceeding.

C. B. & Q. R. R. Co. v. Chicago, *supra*;
Parsons v. Bedford, 3 Pet. 433;
R. R. Co. v. Fraloff, 100 U. S. 24.

As before stated, it is true that there was no Federal question or, more properly speaking, no semblance of a Federal question in the case when it was first passed on by the Supreme Court, but it was certainly the duty of the parties defendant to present all the defenses they had and not keep in reserve one which enables them to prolong litigation. The cause was not remanded in order that they might present new defenses, but it was sent back to the *nisi prius* court that the only issue not disposed of might be determined.

When a cause is remanded by a superior to an inferior court in Missouri with directions, the latter must conform to such directions; it can exercise no discretion in the way of permitting amendments to pleadings or admit evidence that is not relevant to the particular issue it has been directed to pass on.

It appears from the instructions given and refused that the Circuit Court obeyed the mandate of the Supreme Court in considering no question outside of that which it was directed to consider.

II.

Plaintiffs in error acquiesced in the judgment of the Court declaring the property subject to condemnation.

After the verdict for $10,000.00 in favor of defendants, and before the second appeal to the Supreme Court, they filed a motion for an order requiring the clerk of the court to pay over to the Cape Girardeau & Thebes Bridge Terminal Railroad Company, their grantee, that amount, which had been deposited by the Southern Illinois & Missouri Bridge Company as required by law, which motion was sustained and, doubtless, the money was paid.

Its acceptance did not, of course, affect the defendants' right to an appeal in order that it might have the appellate court to determine whether, in the proceeding, the law had been duly observed, but, it is submitted, that the acceptance of the money was a waiver of any right they had to insist that the property could not be taken from them by this proceeding; that the acceptance of the award was an acquiescence in the right to condemn.

This Court, in a case in which the facts were as follows: A plaintiff in error complained that an assignment of property, not accompanied by delivery or an actual change of possession, was, as to him, fraudulent, and his contention to that effect was denied to him, and he claimed he was denied a right arising under an authority exercised under the United States, said:

> "Whether the State Court so interpreted the territorial statute as to deny such a right to the plaintiff in error, we need not inquire, for it proceeded in part upon another and distinct ground not in-

volving any Federal question, and sufficient in itself to maintain the judgment without reference to that question; that ground is that there was evidence tending to show that the defendants acquiesced in and assented to all that was done and waived any irregularity in the mode in which the assignee conducted the business, and that the question whether the defendants so acquiesced and assented with knowledge of all the facts, and thereby waived their right to treat the assignment as fraudulent, was properly submitted to the jury. The State Court evidently intended to hold that, even if the assignment was originally fraudulent as against creditors * * * it was competent for the plaintiff in error to waive the fraud and treat the assignment as valid for all the purposes specified in it. * * * Whether sound or not, we do not inquire. It is broad enough in itself to support the final judgment without reference to the Federal question."

Beaupre v. Noyes, 138 U. S. 401.

In the case of

Eustis v. Bolles, 150 U. S. 361,

this Court said:

"In its discussion of this question, the Court below cited, and claimed to follow the decision of this Court in the case of

Clay v. Smith, 3 Pet. 411,

where it was held that the plaintiff, by proving his debt and taking a dividend under the bankruptcy laws of Louisiana, waived his right to object that the law did not constitutionally apply to his debt, he being a creditor residing in another State. But, in deciding that it was competent for Eustis to waive his legal rights and that accepting his divi-

dend under the insolvency proceedings was such a waiver, the court below did not decide a Federal question. Whether that view of the case was sound or not, it is not for us to inquire. It is broad enough in itself to support the final judgment withourt reference to the Federal question."

III.

The record does not show that the judgment of the State Court was based on a Federal question.

This Court has held that, where the record shows the judgment of the State court might have been based either upon a law which would raise a question of repugnancy to the Constitution, laws or treaties of the United States, or upon some other independent ground, and it appears that the Court did, in fact, base its judgment on such independent ground and not on the law raising a Federal question, it will not take jurisdiction of the case, even though it may think the decision of the State Courts an unsound one.

Eustis v. Bolles, *supra*.

And, further, it is held that where in any action pending in a State Court, two grounds of defense are interposed, each broad enough to defeat a recovery, and only one of them involves a Federal question, the record must show, in order to justify a writ of error, that the judgment was rested upon the disposition of the Federal question, and if this does not affirmatively appear, the writ of error will be dismissed, unless the defense not involving a Federal question is so palpably unfounded that it can not be presumed to have been entertained by the Supreme Court.

Johnson v. Risk, 137 U. S. 300;
Hale v. Akers, 132 U. S. 554;
Miller's Executors v. Swann, 150 U. S. 132.

IV.

Construction of Act authorizing incorporation of Bridge Companies in Missouri, showing that it applies to the Mississippi River.

It is claimed that the statute authorizing the formation of bridge companies, which is as follows:

> "Section 1351. Any number of persons not less than ten may form a company for the purpose of constructing and maintaining a bridge over any of the streams of water, or any part of such streams which may be within this State, for the public use for the crossing of persons or property according to the provisions of this Article"
>
> (Section 1351, Revised Statues of Mo., 1899),

does not apply to bridges across the Mississippi River, plaintiffs in error saying:

> "It applies by its express terms to the construction of bridges over any of the streams of water, or any part of such streams, which may be within this State", etc.

According to their view, it should be construed to apply to the bridging—

1.

Of streams wholly within the State; or,

2.

To that part of a stream, both of whose banks are in the State, but a part of which stream is also in some other State.

Judge GANTT, in his very able opinion on the first appeal in this case, construes the act as authorizing the construction of bridges over streams forming the boundary lines of a State, like the Mississippi River. He says:

> "For fifty years, at least, our laws have invited and encouraged the incorporation of bridge companies to build bridges over the streams of water in this State, or partly therein, and, under their authority, bridges have been constructed over the Mississippi River",

and he refers to two cases to support this statement:

> Bridge Company v. Shawbacker, 49 Mo. 555;
> Bridge Company v. Ring, 58 Mo. 491.

But it is claimed that the Missouri State Constitution authorizes special legislation on that subject, by including among the exceptions to the enactment of special laws, the following:

> "for the erection of bridges crossing streams which form boundaries between this and any other State",

and, therefore, that any general law which purports to give authority for the incorporating of companies to erect bridges over boundary line streams is violative of that constitutional provision.

It perhaps, ought to suffice to say that the judgment of the Supreme Court of Missouri on that question will, undoubtedly, be the judgment of this Court, whatever opinion this Court may have of the correctness of the views entertained by the State Court which have found expression in the several cases named, but the suggestion of counsel, that it was in the mind of the framers of the Constitution to discriminate against persons who proposed to overcome the great natural barriers to uninterrupted transportation and intercourse between the State of Missouri and other States, is so at variance with other provisions of that instrument and so foreign to the public policy of

the State, that we feel we ought to say that, in our opinion, learned counsel have not given their usual consideration to this particular question, and are doing an injustice to the men who made the Constitution.

The legislature certainly has the power, under the authority referred to, to enact special laws, incorporating bridge companies, although it has never exercised such power; but this can not mean that it has no power to enact a general law which will apply to all companies formed for the purpose of building bridges across

> "streams which form boundaries between this and any other State",

or a general law applying to all bridges to be constructed over any of the waters of the State.

V.

The statute of Missouri confers the right of eminent domain on foreign bridge companies.

Section 1352, R. S. Mo., 1899, confers the right of eminent domain on Missouri corporations. See pages 2–3 of statement.

But it is contended by plaintiffs in error that the law of Missouri does not confer the right of eminent domain on a corporation organized in another State and, therefore, that plaintiff can not maintain this suit.

Section 1024, Revised Statutes of Mo., 1899,

which defendant in error insists confers upon foreign corporations, complying with certain other sections of the statute, as this company did, the same powers possessed by corporations of the State, is as follows:

> "Every corporation for pecuniary profit formed in any other State, territory or country, before it

shall be authorized or permitted to transact business in this State, or to continue business therein if already established, shall have and maintain a public office or place in this State for the transaction of its business, where legal service may be obtained upon it, and where proper books shall be kept to enable such corporation to comply with the constitutional and statutory provisions governing such corporation; and such corporation shall be subjected to all the liabilities, restrictions and duties which are or may be imposed upon corporations of like character organized under the general laws of this State, and shall have no other or greater powers. And no foreign corporation established or maintained in any way for pecuniary profit of its stockholders or members shall engage in any business other than that expressly authorized in its charter, or the law of this State under which it may come, nor shall it hold any real estate for any period longer than six years, except such as may be necessary and proper for carrying on its legitimate business. And no corpoation incorporated under the laws of any other State, territory, or country, doing business in this State, shall be permited to mortgage, pledge or otherwise encumber its real or personal property situated in this State, to the injury or exclusion of any citizen or corporation of this State who is a creditor of such foreign corporation, and no mortgage by any foreign corporation, except railroad and telegraph companies, given to secure any debt created in any other State, shall take effect as against any citizen or corporation of this State, until all of its liabilities due to any person or corporation in this State at the time of recording such mortgage have been paid and extinguished."

This section of the statute was enacted in this State in 1891. The same section first appeared in the Revised Statutes of Illinois of 1872, Chapter 32.

It was construed in two cases before its enactment in Missouri.

> Barnes v. Suddard, 117 Ill. 241;
> Stevens v. Pratt, 101 Ill. 217.

In the latter case the Court said:

> "The language of the last sentence of Section 26, that foreign corporations shall have no greater powers than our domestic corporations, can imply nothing less than they are to have the same powers."

Referring to this section, the Supreme Court of Missouri, in the first opinion in this case, said:

> "In our opinion the statute is susceptible of no other construction, and, having adopted the Illinois statute, we presumably intended to adopt the construction placed upon it when we appropriated it."

But the language of this section was also construed by this Court in the case of

> Christian Union v. Yount (an appeal from the Circuit Court of the United States for the Southern District of Illinois), 101 U. S., *l. c.* 360,

this Court referring to the general statute of Illinois passed in 1872, saying:

> "Section 26 of that general statute expressly recognizes the right of foreign corporations to acquire real estate in Illinois. Its language is 'Foreign corporations and the officers and agents thereof' doing business in this State shall be sub-

jected to all the liabilities, restrictions and duties that are or may be imposed on corporations of like character organized under the general laws of this State, and shall have no other or greater powers.' "

VI.

Plaintiffs in error insist that the laws of Illinois do not confer the Right of Eminent Domain on bridge companies and, therefore, such companies can not exercise that right in Missouri.

It is claimed that the law of Illinois does not confer the right of eminent domain on bridge companies, and that the Southern Illinois & Missouri Bridge Company can not exercise a right or power in Missouri which it can not exercise in Illinois.

On the first hearing, the Supreme Court ruled that the burden of proving the want of authority in the incorporating State rested upon defendants,

(So Ill. & Mo. Bridge Co. v. Stone *et al.*, 174 Mo. *l. c.* 35)

and that in the absence of such proof, it would be presumed that a company with a charter of the State of Illinois, authorizing it to build a specific bridge had a right, under the laws of that State, to do so; or, perhaps we should say that Court refused to recognize the presumption that the foreign State had a different law.

IV Wigmore on Evidence, Sections 2536 and 2573.

Assuming that defendants had the right to reopen this question after it had been closed—after the cause had been remanded—the evidence offered by them was

not sufficient to prove the non-existence of a foreign law.

As shown on

Page 83 of the Transcript of Record,

the defendants offered

Section I, Chapter 32, Revised Stat. of Ill., 1901, which related to the formation of corporations

> "for any lawful purpose, except banking, insurance, real estate, brokerage, the operation of railroads and the business of loaning money",

and providing that corporations formed for the purpose of constructing railroad bridges shall not be held to be railroad corporations.

A section of the Missouri Statute corresponding with the one offered would show no right of condemnation in the corporations to be organized under it, but another statute, as we have seen, does show it.

The Illinois statute in relation to eminent domain, or some other pertinent statute, ought to have been offered, or a witness, learned in the law, who could testify that there was no statute in the State conferring the right of eminent domain on bridge companies, ought to have been produced.

Sections 486, 487, 488, 490, I Greenleaf on Evidence;
I Wigmore on Evidence, Sec. 564;
IV Wigmore on Evidence, Sec. 2556.

That a printed statute book of a sister State is admissible as evidence in the Courts of Missouri, is not denied, but it is not competent for a party to read a section of the statute which does not relate to the par-

ticular matter under investigation, and then insist that he has established such particular fact. Besides, the evidence, if admissible at all, was for the Court to construe, and not for the jury.

IV Wigmore on Evidence, Sec. 2558, and note.

After the first decision of the Supreme Court, it was not competent for either party to introduce evidence on any subject, except the value of the land, and the plaintiff did not offer to do so.

We do not wish to admit, however, that the great State of Illinois has no statute by virtue of which bridges may be built over its navigable waters and land condemned for approaches to such bridges in order that they may be utilized.

But, assuming that the Bridge Company is not vested by the law of Illinois with the right to expropriate property, the condemning of it in Missouri, whose laws authorize it, is not *ultra vires* of a charter which confers the franchise to erect and maintain a bridge spanning the river between the two States.

It will be presumed that the State of Illinois meant to grant to the corporation the right to acquire land for the necessary approaches, and for such terminals as it became necessary for it to employ in the operation of the bridge. The charter could have no ex-territorial effect; it could not empower the company to condemn land in Missouri; the land could only be acquired pursuant to the laws of Missouri, and these authorized the condemnation.

The objection is as to the means resorted to to get the land, and not because of any disability on the part of the company to own and to hold it.

There is no rule of public policy of the State of Illinois violated by permitting the company to employ the remedies afforded to all other like companies by the Courts of Missouri. The company is not prohibited from exercising the right given to it in Missouri; it is rather encouraged to do so in that it is licensed to obtain the land.

Express Co. v. R. R. Co., 91 U. S. 191;
Relfe v. Rundle, 103 U. S. 222;
Taylor on Private Corporations, Secs. 389–390–391;
Reese on Ultra Vires, Secs. 166–167.

VII.

Plaintiffs in Error can not complain that the work was not commenced within twelve months from approval of the Act.

Plaintiffs in error make the point that the right to commence the errection of the bridge structure was limited to one year from the date of the approval of the Act, and that it was not commenced within that period.

It may be that the actual work on the abutments of the bridge was not commenced within the time, but certain necessary and important work—without which the abutments could not have been constructed or the bridge built—was commenced.

Evidence W. E. Angier, engineer, T. of R., p. 22 *et. seq.*

We do not, however, believe that a failure to commence the work within the time, if there had been such failure, could be availed of by plaintiffs in error.

It seems Congress was satisfied with the time in which the work was commenced and with the progress made in the bridge's construction, for, by an Act approved January 18th, 1904, it is provided that

> "Section 13 of the Act entitled 'AN ACT to authorize the construction of a bridge across the Mississippi River at or near Gray's Point, Missouri', be, and the same is, hereby so supplemented and amended as to extend the time for the completion of the construction of the bridge and approaches by said Act authorized, until the 26th day of January, in the year of our Lord 1907".
>
> Public Laws of the United States of America, Passed at the first and second sessions of the 58th Congress, 1903-4, p. 6.

VIII.

The law of Missouri authorizing the construction of bridges is not unconstitutional.

Again it is urged that, if the law of Missouri can be interpreted to authorize the construction of bridges over navigable rivers, which do not lie wholly within the limits of the State, such law is unconstitutional, because it is in conflict with the

> "Federal Constitution and the laws which forbid any State from constructing or authorizing the construction of bridges prior to congressional sanction",

and

> Sec. 9, Chap. 425, U. S. Stat. at Large,

is referred to.

See page 8 of Statement of Defendant in Error for Act of Congress.

The Bridge Company was incorporated in Illinois on the 6th day of December, 1900, and the Act of Congress authorizing the construction of the bridge was approved January 26th, 1901, and it was authorized to do business in the State of Missouri on March 25th, 1902.

Counsel certainly do not mean that there ought to have been a special Act of Congress authorizing the construction of a bridge by a non-existent bridge company. Evidently there was no purpose to construct a bridge without an Act of Congress authorizing it, for, within a month after the Bridge Company was incorporated, it applied to Congress for authority to build it. There was no offending by Missouri, because the admission of the Bridge Company into Missouri to do business was more than a year after the "Federal sanction" had been obtained.

IX.

The Act of Congress and the plans approved by the Secretary of War were to protect the navigation of the river, and did not preclude the company from acquiring necessary lands for terminal purposes.

It may be well to remember that the Southern Illinois & Missouri Bridge Company never undertook to build the bridge under a Federal charter; it has no such charter. It had the authority of Congress to construct a bridge over one of the great, navigable rivers of the country, and this it was required to do in accordance with the Act of Congress and in conformity with plans and specifications which were approved by the War Department.

Congress believed that a bridge, built as required by the Act and under the supervision of the Secretary of War, would reduce the interference with navigation on the Mississippi River to a minimum. Its only concern was to prevent any substantial interference with commerce on the river.

The supervision of the Secretary of War was not confined to the construction of the bridge proper, but extended to the approaches; otherwise, the latter might have been so built as to operate as a dam in times of high water, causing erosion of the banks and a consequent obstruction of the channel.

Plaintiffs in error seem to be of opinion that the Act of Congress took all the life out of the State charter, for they contend that nothing can be done under the company's charter, in the way of providing necessary approaches and terminal yards so that the bridge may be used by the company for the accommodation of traffic.

The 720 feet, where the approach required by the War Department ends, is some sixty feet from the ground. The structure has been extended beyond some 180 or 200 feet to the crest of a bluff, and then the right-of-way crosses over the Stone land to a point beyond where the terminal yards of the company are located.

If it be true that the passage of the Act of Congress deprived the company of all its privileges and powers conferred by the charter and the laws of the two States, then it is a useless structure, representing nothing more than the financial ruin of the Bridge Company.

> "A railroad bridge can be of no use to the public, unless united with necessary appurtenances, such

as approaches, tracks, depots and other facilities, for the public accommodation."

Union Pacific R. R. Co. v. Chicago, Etc., Ry. Co., 163 U. S., *l. c.* 588.

The Court further said:

"It is true that it appears that, from the depot to the point in South Omaha where the tracks of the companies connected, is about four miles, but the scheme of Congress was to accomplish the more perfect connection at or near Council Bluffs, Iowa, and Omaha, Nebraska, and we think this distance reasonable within the terms of the Act, liberally construed, as the Act should be."

Union Pac. R. R. Co. v. Chicago, Etc., Ry. Co., *supra*.

The bridge can not be operated without some kind of terminals. To reach the terminals, it must have railroad tracks, and these tracks must pass over the lands belonging to the plaintiffs in error.

Evidence W. E. Angier, Engineer, T. of R., p. 22.

But there was no purpose on the part of Congress to prescribe the extent of the terminals, except as they were necessary to preserve the navigability of the river, and it had no power to do more. When the company submitted its plans of the bridge and its approaches to the Secretary of War, it did not understand that it was estopped thereby to purchase other ground for its uses or to go into Court and condemn ground that it could not otherwise secure. If plaintiffs in error are right, the Act of Congress and the plans and specifications submitted to the Secretary of War measure all the

rights, the privileges, the powers of the Bridge Company, and the company can only hold on the Missouri side the elevated structure, some 900 feet in length.

If the property can not be subjected to a public use in this proceeding, it must be because the Act of Congress and the acts of the Secretary of War stand in the way, and if they stand in the way of a condemnation suit, then they stand in the way of a voluntary conveyance to the company, for plaintiffs in error say that Congress and the Secretary of War have the right to determine, and have determined just how much ground the Bridge Company is authorized to acquire and hold.

There certainly does not seem to be any Federal question in this case. The only one that bears a resemblance to a Federal question is the one last considered, and that appears to be fictitious.

MARTIN L. CLARDY,
Attorney for Defendant in Error.

ALEXANDER G. COCHRAN,
Of Counsel.

Supreme Court of the United States.

No. 253.—October Term, 1906.

R. G. Stone, R. M. Finley and Nannie E. Finley, Plaintiffs in Error, vs. Southern Illinois and Missouri Bridge Company. } In error to the Supreme Court of the State of Missouri.

[May 13, 1907.]

Mr. Justice Day delivered the opinion of the Court.

On March 3, 1899, Congress passed an act providing, among other things:

"That it shall not be lawful to construct or commence the construction of any bridge, etc., . . . over . . . any . . . navigable river . . . of the United States until the consent of Congress to the building of such structures shall have been obtained, and until the plans for the same shall have been submitted to and approved by the Chief of Engineers and by the Secretary of War."

The act further provided:

"That when plans for any bridge or other structure have been approved by the Chief of Engineers and by the Secretary of War, it shall not be lawful to deviate from such plans either before or after completion of the structure, unless the modification of said plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War." 30 Stat. 1151, sec. 9.

On January 26, 1901, Congress passed an act (31 Stat. 741) authorizing the Southern Illinois and Missouri Bridge Company, (defendant in error) a corporation of the State of Illinois, to erect, construct, maintain and operate a bridge and approaches thereto over the Mississippi River from a point on the Mississippi River in Alexander County, in the State of Illinois, opposite the terminus of the St. Louis Southwestern Railway, at or near Grays Point, in Scott County, in the State of Missouri, or from some other convenient point on said river in said Alexander County, Illinois, to some opposite point on said river in the State of Missouri, within the distance of three miles above or below the terminus of said railway.

The bridge was to be constructed for the passage of railway trains and, at the option of the corporation, might be so constructed as to provide for

the use thereof by wagons, vehicles, and the transit of foot passengers and animals at such reasonable tolls as might be approved by the Secretary of War.

It was also provided that the bridge constructed under the act and subject to its limitations should be a lawful structure and recognized and known as a post route of the United States.

Section 5 provides:

"That the approaches to the bridge built under this act shall be so designed and constructed as not to interfere with the free discharge of the river in seasons of flood; and any encroachment on the high-water cross sections by piers, solid embankments, or otherwise, which might result in unduly accelerating the high-water current at the site of the bridge, shall not be allowed."

Section 7 provides for the submission to the Secretary of War of the drawings of the bridge, piers, approaches and accessory works and a map of the location, giving, for the space of at least two miles above and one mile below the proposed site, the topography of the banks of the river and the shore lines at high and low water. The maps and drawings are to be referred to the board of officers of the Corps of Engineers, United States Army, for examination and report.

Provision is made for hearing objections to the construction of the bridge, and it is provided that the proposed bridge shall be a lawful structure only when built in accordance with the plans recommended by the Board of Engineers and approved by the Chief of Engineers, and by the Secretary of War, and while so managed and kept in repair as to offer at all times reasonable and proper means for the passage of rafts, steamboats and other water craft under the said bridge and while said requirements are observed.

Section 10 provides for alterations and changes as may be required by the Secretary of War, in accordance with existing law, in the bridge constructed under the provisions of the act, so as to preserve free and convenient navigation. Such changes were to be made, under the direction of the Secretary of War, at the expense of the persons, companies, or corporations owning, controlling and operating the bridge.

Section 11 provides that the bridge shall be constructed under the general supervision of the Secretary of War, and no changes or alterations in the plan shall be made during the construction of said bridge or after its completion, unless recommended by the Chief of Engineers and approved by the Secretary of War.

The act makes provision for the preservation of the navigable channel during the construction of the bridge.

Section 12 provides that whenever Congress shall decide that the public interests require it, the right to order the removal of the bridge at the expense of the owners is expressly reserved, without liability for damages on the part of the United States.

Section 13 provides that if the bridge is not commenced within one year and completed within three years from the date of the approval of the act, the same shall be null and void, and the rights thereby conferred cease and determine.

The Southern Illinois and Missouri Bridge Company, in pursuance of this act, submitted its drawings and plans and the same were duly approved as required by law.

The bridge company, on the 24th day of April, 1902, filed its petition in the Circuit Court of Scott County, Missouri, for the appropriation of a strip of land containing 20.3 acres, said to be approximately 4,000 feet long and 200 feet wide, alleging that it is necessary to have a right of way for the railway tracks, bridge and terminal yards of the company, and for the purpose of carrying out its charter privileges it is necessary to hold and own the described tract.

On trial in the Circuit Court that court held that the bridge company had no right to make the appropriation under the laws of Missouri.

From this adjudication an appeal was taken to the Supreme Court of Missouri and that court reversed the judgment of the Circuit Court, and remanded the case with directions to the lower court to appoint three disinterested commissioners to assess the damages which the defendants would sustain by the appropriation of the strip of land. 174 Missouri, 1.

Such proceedings were had, and ten thousand dollars was assessed as damages in favor of the plaintiffs in error, defendants below, and a second appeal was prosecuted to the Supreme Court of Missouri, where judgment below was affirmed. 194 Missouri, 175.

To that judgment this writ of error is prosecuted.

Many of the assignments of error involve only questions of State law, the rulings concerning which, in the Supreme Court of the State, are conclusive, and involve no substantial Federal question.

Among these may be named:

The contention that the statutes of Missouri do not authorize the incorporation of a bridge company to build a bridge across the Mississippi River;

That the laws of Missouri do not confer the right of eminent domain on a corporation of another State;

That a corporation of Illinois can only exercise in Missouri such powers as are conferred upon it by the State of its creation.

These questions involve the powers of corporations under the laws of Missouri, which are concluded by the adjudication of the State Supreme Court.

There is no contention that the statutes conferring the right of eminent domain passed by the legislature of the State of Missouri, and which its courts have decided authorize this appropriation by the defendant in error, do not make ample provision for assessment of damages to the land owner by due process of law. Whether a given corporation comes within the law of the State, and is entitled to assert its power, presents only a question of State law.

Nor is error shown in the contention that the erection of the bridge was not begun within the year, as provided by the act of Congress. The evidence shows that the bridge has been constructed without complaint by the Federal authorities, and, indeed, Congress has extended the time for the completion of the bridge by an act passed January 18, 1904. 33 Stat. Part 1, p. 6. It cannot prejudice any Federal right secured to the plaintiffs in error that the right of eminent domain is authorized by the State, notwithstanding the bridge was not begun within the time which Congress might have insisted upon as a condition of enjoyment of the privileges conferred.

If the record presents any Federal question at all, it rests in the contention that the appropriation in controversy is in contravention of the act of Congress, because it is an unauthorized extension of the approaches to the bridge upon the Missouri side, not included in the drawings and plans as submitted to the Secretary of War and which met with his approval as already recited.

The copy of the approved drawings in the record shows that the approach to the bridge upon the west side was shown in a series of arches extending from the river bank to a distance of 720 feet. And it is the contention of the plaintiffs in error that, in view of the act of Congress, the approach must be limited to the extent and construction shown in the plans and drawings thus approved by the Secretary of War. Indeed, it is contended that this plan, after its approval, became a limitation upon the power of the State to extend the bridge by authorizing further approaches and connections.

But we think this contention wholly untenable. The act of Congress and the powers given the Secretary of War thereunder are the result of the exertion of the constitutional power conferred upon Congress to regulate commerce between the States. Federal control of bridges constructed over navigable waters is maintained because of the right to prevent obstructions to navigation and preserve such public highways as rivers for

free and unobstructed use in the interest of commerce. *Bridge Company* v. *United States*, 105 U. S. 470–475, and cases therein cited.

An examination of the act of Congress under which the bridge company was authorized to construct this bridge manifests the purpose to prevent its becoming an obstruction or interference with free navigation of the river, and when the matter of approaches is specifically spoken of it is provided that they shall be so designed and constructed as not to interfere with the free discharge of the river in seasons of flood.

It is evident that the purpose of requiring the submission of plans, and their approval by the Secretary of War, was to preserve, as far as may be, the unobstructed passage of the river in the uses of navigation. To the extent that it was necessary to protect such interests, the law provides that the structure shall be unalterable and that its approaches shall be approved by the Secretary and remain unchanged without his sanction, but it certainly never was designed to destroy the usefulness of the bridge by limiting the power of the State to authorize the corporation constructing and owning it, by proper connections and other facilities, to make the bridge available for the purposes for which it was intended. The bridge and approaches as approved by the Secretary of War have not been altered. The connecting approaches and tracks are additional means of making the bridge available for the purposes intended.

As was pertinently observed by the Chief Justice, in delivering the opinion of the court in *Union Pacific Ry. Co.* v. *Chicago &c. Ry. Co.*, 163 U. S. 588, "A railroad bridge can be of no use to the public unless united with necessary appurtenances, such as approaches, tracks, depots and other facilities for the public accommodation."

If the State was deprived of its power to authorize extensions and connections which should make this bridge available for the common use of railroads for which it was intended, it would have been a vain thing to provide for a bridge abruptly terminating at a height and point where, without further approaches and connecting facilities, its usefulness would have been destroyed.

This record shows that the point 720 feet to the west, where the approach required by the War Department ends, is at a height of some 60 feet from the ground. The structure was thence extended some distance to the crest of a bluff, thence over the lands of the plaintiffs in error to a point where the terminal yards of the bridge company are situated

We cannot find it within the purpose of Congress, if it had the power so to do, by the terms of this act to limit the State in its right to authorize these necessary terminals and connecting facilities, because the plans and specifications, which fully subserved the purpose of showing the extent to

which navigation would be affected had been specifically approved by the Secretary of War and are not to be altered without his consent.

In our view no Federal right was taken from the plaintiffs in error by the action complained of under the State laws as interpreted by the Supreme Court of the State of Missouri, and if it may be said that the contention fairly represents a Federal question, we are unable to find merit in it.

Judgment of the Supreme Court of Missouri is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.